UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

-vs- CRIMINAL NUMBER:

MOHAMAD IBRAHIM SHNEWER, 07-CR-00459

Defendant

Mitchell H Cohen United States Courthouse
One John F Gerry Plaza
Camden, New Jersey 08101
Date April 29, 2009

B E F O R E: THE HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

RALPH MARRA, JR.
UNITED STATES ATTORNEY
BY: WILLIAM E. FITZPATRICK
MICHAEL A. HAMMER
ASSISTANT UNITED STATES ATTORNEYS

ROCCO C CIPPARONE, JR., ESQUIRE
Attorney for Defendant
Mohamad Ibrahim Shnewer

Carl J. Nami, CSR
Official Court Reporter
New Jersey CSR #557

(Open court)

THE DEPUTY COURT CLERK: All rise.

THE COURT: Thank you everyone. Have a seat, please. Good morning everyone.

MR. CIPPARONE: Good morning, Your Honor.

MR. HAMMER: Good morning, Your Honor.

THE COURT: All right. There's some new people here, new faces. I just want to repeat something that I started the proceedings with yesterday, and that is the necessity of maintaining order in the courtroom. For those of who you weren't here yesterday for my announcement, there can be no disruptions or interruptions of the proceedings. I don't see any little children here. Well, some. And I know children make noise. The get bored and we all understand that. But they can't make noise because we can't hear the proceedings if they make a lot of noise so. If you have a child who makes noise, I'd ask you to please take them outside. Anyone who disrupts the proceedings or interrupts the proceedings will be removed from the courtroom and evicted from the court house and will not be permitted to return to this courthouse or this courtroom. The U. S. Marshals have the authority to enforce this order without further direction from me and there will be no further warnings about this. Please, please do not interrupt, shout, make noise.

All right. Mr. Cipparone are you ready for your

client?

MR. CIPPARONE: Yes, Your Honor.

THE COURT: Can we bring out the defendant, please?

(Defendant present)

THE COURT: All right, this is the matter of United States versus Shnewer. Let's have the appearance of counsel. We'll start with the Government, please.

MR. HAMMER: Good morning, Your Honor. Michael Hammer and William Fitzpatrick.

MR. CIPPARONE: Good morning, Your Honor. Rocco Cipparone on behalf of Mohamad Shnewer.

THE COURT: All right, Mr. Cipparone have you and your client had sufficient opportunity to review tell pre-sentence investigation report?

MR. CIPPARONE: Yes, Your Honor.

THE COURT: I know there's a number of Guideline related issues which we well get to immediately. But other than that, do you want to note any other objections for the record.

MR. CIPPARONE: I've already noted in the letter to the Probation Department the contest of certain facts, fact determinations. I understand obviously I was present yesterday. I understand the Court's rulings with respect to those. I simply noted them for Your Honor for the record.

THE COURT: Yes. Fine. How about the Government.

MR. HAMMER: No objections, Your Honor.

THE COURT: All right. Great. Well, then let's get into it, Mr. Cipparone. You want to place on the record the essence of your Guidelines related objections?

MR. CIPPARONE: Yes, Your Honor. And again, having sat through the proceedings yesterday, I'm mindful of the fact that three very able lawyers yesterday presented essentially the same arguments that I presented to the court and to the Probation Department with respect to guideline objections. Some I'll list them. I'll be brief.

THE COURT: Yell.

MR. CIPPARONE: In terms of the positions understanding your rulings from yesterday.

THE COURT: And you briefed them also.

MR. CIPPARONE: I have briefed them. In a sentencing submission to Your Honor as well. The first obviously relates to the official victim enhancement under Section 3(a)1.2 of the Guidelines. I submitted to the court that the six level enhancement under that section of the Guidelines should not be applied to Mr. Shnewer. The only and application of the arguments made yesterday that I'd like to make is a little bit of a different spin in addition to incorporating those arguments of cocounsel yesterday. One additional position I take is that the guideline does not define the term victim as it is used therein. And if we look to, for guidance to the other Federal provisions in which the term victim is defined, I think the Court should follow the kind of long-standing tradition of how the term victim has been interpreted. Both under Federal Rules of Criminal Procedure 32. Also under the mandatory restitution provisions of Title 18, the term victim essentially is defined as an individual who has suffered a direct or proximate harm as a result of the crimes of conviction. Here because the two crimes of which Mr. Shnewer has been convicted by the jury are they are inchoate crimes. There has been no direct proximate cause established with respect to individual victims of any harm suffered by any individual victims. I'd submit that the facts of this case do not fit the definition of victim as it traditionally has been applied in the Federal statutes, which is the same definition I would urge the Court to apply to the official victim enhancement in the definition of the term victim in that section of the Guidelines. I've obviously briefed this somewhat extensively and unless the court has questions on that point, I'm content to rely on the brief on that issue as well.

THE COURT: No, I don't have any questions. Actually it was an excellent brief. It's a great point you make, but the problem is you undoubtedly recognize there's no case law that supports you. In fact case law supports the government in the Polk case.

MR. CIPPARONE: I do, the one thing I would say about the Polk case Your Honor, and I'm going to make an attempt here to distinguish, I'm simply going to say that the Fifth Circuit got it wrong in Polk. The Third Circuit hasn't addressed it nor has the U. S. Supreme Court and, therefore, Your Honor, is free to accept an alternative position from that of the Fifth Circuit in Polk and I had urge the Court to do that.

THE COURT: No, I know, I know I have that ability to do that. But I don't think I will. I do agree with Polk. I think the guideline application note number one which says this guideline applies when specified individuals are victims of the offense. This guideline does not apply when the only victim is an organization, agency or the Government. I don't think that forecloses the six level enhancement just because no specific person was identified in this case as a victim. I think that's what the Polk court recognized. And I think the second sentence, the victim is an organization, agency or the Government is more directed at, for instance, an anarchist whose only desire is to cause damage to a government to bring down a complete government, not to kill specific individuals. And there are other instances throughout our history of anarchists planting bombs on Wall Street and things like that. I think that's what that is more directed to than this instance where there are victims, specified victims but not by

name. The victims are the United States military personnel and they are victims only because of their status and their targeted only because of their status.

So for all of those reasons, I'm going to affirm the finding of the Probation Department as the six level increase for official victim.

MR. CIPPARONE: The next guideline objection, Your Honor, relates to the terrorism enhancement under Section 3(a)1.4 of the Guidelines. Again I incorporate by reference the arguments made at sentencing yesterday by counsel for the three Duka defendants. Incorporate by reference the arguments set forth in my brief. And I'd ask the court to not apply the terrorism enhancement to this particular case. There's a little bit of an overlap between this and a downward departure slash variance request I've made of the court with respect to how that terrorism enhancement affects the criminal history category. I can argue that now. I can do it in conjunction with the motion. I don't know how the court prefers to proceed.

THE COURT: Well, if you want to do it now, that's fine.

MR. CIPPARONE: I can do it now. Obviously there's a jump of 12 levels in the offense level as a result of terrorism enhancement. But there's also a corresponding jump from a -- in Mr. Shnewer's case criminal history category one

was zero criminal history point to a criminal history category six, which traditionally or typically is reserved for the most severe recidivist in our system.

THE COURT: Correct. Career criminal. Armed career criminal.

MR. CIPPARONE: There is obviously an expressed provision in the Guidelines that provides for a downward departure in the event that the criminal history category over-represents the defendant's prior criminal history. And I argue this both as a motion for departure but also a variance in conjunction with the other 3553 factors that I will discuss shortly. And respectfully if ever there was a case where the criminal history category over-represents a defendant's prior criminal conduct, it has to be Mr. Shnewer's. He has --

THE COURT: Well, I don't know that he's unique. I mean it's just a very strange provision to bump it from whatever it is to a six. And it really doesn't care where it starts. It can be a 1, 2, 3, 4, 5. Whoever is it it's going to be a six.

MR. CIPPARONE: Right.

THE COURT: It's unprecedented.

MR. CIPPARONE: I really struggled with the rational basis for that zero, almost zero to 60, but I have to say zero to six, you know, acceleration. Mr. Shnewer as Your Honor knows from the presentence report has not even a single arrest in his background. Not even a single -- and he was a taxi driver, not even a single motor vehicle violation that's reflected in the pre-sentence report. So, he truly is a Category one, zero points person with no prior contact with the criminal justice system. So the rationality of a leap from one to six can only be based in my interpretation or understanding of the Guidelines on this concept that once a terrorist, always a terrorist. The problem with that I guess from the individualized perspective is if we simply accept that as a basis for never deviating from Congress's policy determination that once a terrorist always a terrorist it removes the individualized aspects of sentencing that apply and should apply to any defendant standing here before a court facing up to or more than in this case the rest of his life in jail. And if we, you know, just broad brush accept that policy reason as a reason not to deviate from the criminal history category six or from the offense level adjustment for that matter, we really remove any consideration of the individual characteristics regarding Mr. Shnewer.

I heard Your Honor say and I agree, that I've never as well seen a level 51 which is a level applicable to Mr. Shnewer in the strict application of the Guidelines in another case. But while that reflects a seriousness of the offense and I don't dispute the seriousness of the offense and I don't think Mr. Shnewer will when you hear him speak as well. It

doesn't allow for the court to consider all of the factors I'm going to discuss in a moment about his background, the kind of person he is and what his family members will tell you, and frankly what he'll tell you in few moments. So I'd ask the court to consider that, to consider that, you know leap frog effect from a Category one to a Category 6 and grant a downward departure or in the alternative if the court declines that, consider that factor along with the other 3553 factors that I'll address and the variance.

THE COURT: Well, there's no question the policy behind this is to punish this particular crime. This particular set of circumstances as severely as possible. Whether that's a good policy or not is not up to me and that is the policy behind this, and they do it two ways by including, by increasing the offense level, but I think the increase of the criminal history category is equally important. And that ensures it's the maximum sentence under the Guidelines possible. So, you know the way I've always interpreted the over-representation variance is a defendant who committed a couple of crimes 20 years previously and because of that gets a high criminal history score and has led a law-abiding life in intervening years unless he stands before the Court again. And there it's permitting us as judges to make the determination that he really isn't a career criminal and that he shouldn't be treated as a career criminal

at that point. This is such a strong policy statement under this guideline that I'm not going to apply and I'm not going to grant your variance request or a downward departure request an over-representation. And having said all that, obviously you recognize that under 3553, I have great flexibility to fashion a sentence and I mean obviously one factor in all this, and we'll get to those factors eventually, is that he has never been arrested before unlike some of the other defendants in this case. So, you know, that will be taken into account. I'm not sure it makes a huge bit of difference in the case but it will be taken into account.

MR. CIPPARONE: I understand. Beyond that, those were the only guideline related objections. I don't know if Your Honor wants to proceed to the 3553 factors.

THE COURT: No. I want to hear from the government on their recommendation and their analysis of 3553 factors and then you have some people who are going to speak.

MR. CIPPARONE: I do.

THE COURT: Okay. Mr. Hammer.

MR. HAMMER: Thank you, Your Honor. Your Honor, as we briefed to the court, the government's position is that a life sentence of, sentence of life imprisonment plus the 30 years for the defendant's 924(c) count is a necessary and appropriate sentence in this matter. I think that the evidence at trial proved overwhelmingly that this defendant

Mohamad Shnewer was at the epicenter of the conspiracy. In fact, the court may recall the testimony of the Government's terrorism expert, Evan Kohlmann who testified that the new model for Al Qaeda was essentially decentralization and trying to foster home grown terrorism through tools such as the internet and the videos that Al Qaeda puts out over the internet. And I submit the evidence showed overwhelming that Mohamad Shnewer embodied that. And that's that proven in several different ways. First, Mohamad Shnewer was fully radicalized well before this investigation ever began. That was proven by the videos that he had on his computer from at least 2005. Videos such 19 also known as the will of Abdulah Aziz Alumara which was the last testament of one of the 19 highjackers from 9/11 and urges people like Mohamad Shnewer that it is their duty to engage in Jihad. VPS 01-1. And statement of the Uma, destruction of the USS Cole, and the London expedition and Batar Bagdad as well as a number of videos depicting bombings and violence against U.S. soldiers. Those are videos that Mohamad Shnewer had on his computer well before the investigation began. Mohamad Shnewer's commitment to martyrdom and the cause of Jihad is evident as well from time and time again his own statements throughout the investigation. He made it clear repeatedly his outright adoration of Usama Laden and Abu Mus'ab al-Zarqawi and the 9/11 highjackers. In fact, on August 4th and 5th when Mahmoud

Omar voices skepticism about doing an attack. Mohamad Shnewer uses Usama Bin Ladin and the 19 brothers as he puts them who changed the whole world. Changed the face of this earth. And he says that's our model. Those are the people that we need to follow. And he says as well on August 11, 2006, the day that they go surveil Fort Dix. If you are able to bear arms, you must be on the battle field. You must, you must, there is no doubt about it. There is no doubt about it. It's clear. And, Your Honor, the record reflects instance after instance after instance, where Mohamad Shnewer talks about their obligation to follow in the path of the Mujahideen and Usama bin Laden and engage in the Jihad. It would be hard to overstate list involvement in the actual planning of the attack that was at the core of this conspiracy.

On August 1st he's the first one to propose Fort Dix. And Mr. Cipparone tried mightily. He's a fine lawyer. He tried a fine case. He tried mightily to make it appear that that was in response to something Omar had suggested that Shnewer was saying that's something you could do. But I think that that is completely disproven again with Mohamad Shnewer's own words when he says especially if someone speaks their language like me. And he says he's been thinking about it for a long time because he knows that Serdar Tatar knows that place. And he tells Omar later on August 13th in the context of telling Omar about how long Dritan Duka was attempting to

acquire AK47's says because quote: We want it to hit them in Cape May. The Navy. That's going back to 2005. And Shnewer tells Omar as well on August 1st how he wanted to assassinate the president and as he calls it, the Black House. And he tells Omar on August 1st it's his dream to return to Palestine to kill Jews. He's the one in consultation, after consultation with Eljvir Duka who proposes the idea of killing as many as three hundred U.S. soldiers at one time by shooting down an airplane that's departing with soldiers to the Middle East. And when Dover Air Force Base proves to be too difficult a target, he's the one who comes up with the idea of using the gas tanker truck as a vehicle born explosive device and volunteers himself to drive because unlike the Dukas, he can get a commercial driver's license. And again on September 19, 2006 it's his idea himself after consultation with Eljvir Duka to attack the National Guard Armory in Cherry Hill. Attack defenseless guardsmen who are there, kill them, and get as many weapons they can as preparation for a larger attack. And as well it's Mohamad Shnewer's idea to in early 2007 to attack during the Army Navy football game. There's going to be a lot of people in as Shnewer describes it and they inflict a lot of casualties at once. Those are all his ideas. In consultation with Eljvir Duka. And I'd submit, Your Honor, that's not the end of it in terms of planning the attack and his involvement. It's also important to consider his raw zeal

in doing that. In planning that. The court will remember during August 11th the surveillance of Fort Dix, both from the video, the audio and the transcript. Mohamad Shnewer's reaction when they come across a column of Humvees and Shnewer says, expletive. That's what we want. Allah is great. Of my dear, this is an area. This is it. This is it. You know how much my heat, I mean has opened up when I saw this area. This is it, Mahmoud. This is their camp. You see when they are entering. And if someone is. He then goes on to talk about the virtue of dying as a martyr. And after talking about that, he returns to the idea of attacking the Humvee column and he says, this is the area we're looking for. You hit 4 or 5 Humvees, six. Light the whole place up an retreat, I mean completely. Without any casualties.

August 13th and 14th, Mohamad Shnewer says keep tight, this is not a problem, this is not a problem. They might be from the Army. They are the same ones in whose heads we're going to put bullets, God willing. What occasioned -- all the talk during the trial about Mahmoud Omar instigating and even at the sentencing, cooperators instigated, what occasioned Shnewer to make that remark? Nothing more than Omar complaining about somebody tailgating him. It's evident from the record, it's overwhelming that defendant Shnewer needed no prompting or prodding to talk about joining and to actually join in that conspiracy to slaughter American soldiers.

And as well, his zeal for acquire weapons. Throughout March and April 2007 Mohamad Shnewer repeatedly pursues Omar about getting weapons. In fact, he does it going all the way back to August 2006 when he tells Omar the most important thing for me Mahmoud for this attack, is your ability to get us weapons. He offers to come over at any time day or night to pay the Baltimore contact. He tells Omar to have the contact get the four, meaning the AK 47s. He says I know what it is, I've already shot it. At least two other occasions he reiterates he'll take the weapons and pay for them at any point. In fact, in late December Omar proposes to Shnewer should we cancel Baltimore until after the Poconos? And Shnewer says no, I've already got the money, the $2,000, he's read to buy them now. Shnewer offers to make a safe house at his -- to make -- to have a safe at his house to store the weapons. He offers that he could store them like the underground safe he had at the other house.

And then there's the talk about on several occasions wherein Shnewer makes it clear he doesn't merely want an AK 47, he wants RPGs or missiles. He doesn't raise it once or twice, he raises it several times. He tells Omar, you know, I'm thinking of getting a one, meaning the RPG or the Duschka. And this is the same individual who specifically obtained videos that provided instruction on how to make improvised explosive devices specifically in conjunction with doing the attack. I don't think there can be any doubt that Mohamad Shnewer stood at the very epicenter of this conspiracy.

And I expect, your Honor, that we're going to hear from some of Mr. Shnewer's family today about his characteristics. And I saw from some of the letters that he's hard working. And I agree with some of the comments that your Honor made yesterday regarding the other defendant's family members, it's sad, it's tragic. But there's two other points that come out of that.

09:55AM The first one, Mohamad Shnewer, the record showed, repeatedly lied to them about what he was doing. He concealed from them what he was doing. He does it, for example, on August 11th when he actually parks his car at the Barclay Tower apartments and takes Omar's car so that his family 09:56AM wouldn't know where he was and he lies to his mom about where he is. He does the same thing on August 13th when they're surveilling Dover, he tells his father that he's having a conversation with his friend Zaid and he'll be home later. He lies to sister Inas Shnewer telling her that he's at the drive 09:56AM through of a bank. Clearly he routinely deceived them about what he was doing.

One other example, also on the night of August 13th and 14th, when Mohamad Shnewer's proposing that he'll go to the driving school to learn how to drive a tractor trailer as part 09:56AM of the VBED attack, he says I'll tell my parents I'm going to

university so they won't know, and he tells Omar because they suspect something. But I think that Shnewer tried very hard to conceal this Jihadist fervor of his and the bloodlust he had to kill men and women of the U.S. military as hard as he 09:57AM could from his family.

The other part of this, which is tragic and, frankly, I think still difficult to completely comprehend, this is not a defendant who stands before the Court having suffered from extremely difficult economic circumstances or a troubled home 09:57AM life. Clearly he has a very supportive family. And he's had opportunity here. As the presentence investigation report noted, his family came here from the Middle East to get a degree of security and freedom here that they couldn't get there. Mohamad Shnewer got a full education. He had four 09:58AM semesters of community college. Clearly he is a hard worker. I think even before the PSR came out, that was clear. He still found time, though, to do all of these things related to the attack, but he was a hard worker, he had jobs, he had employment opportunities. Yet he was more than willing to 09:58AM forsake all of that in pursuit of this attack, in pursuit of following in the footsteps of his idols Usama bin Laden and Sheik Ayman al-Zawahiri and Zarquwi in committing this attack and pursuing martyrdom. That to me, your Honor, speaks a degree of fervor, a sense of that obligation we talked about 09:58AM yesterday to commit Jihad, that makes the only sentence in

this case that's appropriate, life in prison.

I have nothing else, unless your Honor has any questions.

THE COURT: No questions. Just an observation that 09:58AM he's certainly not the first son to have misled his mother about his whereabouts. I understand why you made the point but that's not a big deal in this case --

MR. HAMMER: Okay.

THE COURT: -- in the grand scheme of what he's 09:59AM charged with.

Thank you.

MR. HAMMER: Thank you.

THE COURT: Mr. Cipparone?

MR. CIPPARONE: Would you like to hear from the 09:59AM speakers at this point?

THE COURT: Whenever you'd like to put them on.

MR. CIPPARONE: If I can do that, and then I'll --

THE COURT: Sure.

MR. CIPPARONE: His mother, Faten, F-A-T-E-N, Shnewer 09:59AM wanted to address the Court.

THE COURT: Ma'am, over here. Rocco, will you tell her to go over there? She needs to go over where the microphone is.

Tell us your name, please.

09:59AM MRS. F. SHNEWER: My name is Faten Shnewer, I'm

Mohamad Shnewer mom.

THE COURT: Could you do me a favor, I know you're very nervous, would you keep your voice up? I'm having difficulty hearing you. Maybe we can raise that microphone a 10:00AM little bit.

MRS. F. SHNEWER: I'm Mohamad mom. My name Faten Shnewer, I'm here to tell you about my son.

Like, it's very hard for me to stand here. I wouldn't, you know, imagine me standing here with all these people. 10:00AM It's not easy for me. And I will just talk about my son.

When we first came here to United States, we came, like, in July '87, he was two years old, Mohamad, and belief me I raised him so good. Since he young, he always very nice. He didn't give me hard time. He always sharing. He loved the 10:01AM people. You know, follow direction. You know, like, he only one with me when I came to the United States. And after three years, I have my daughter Inas, and he always, like, with Inas, like, friend, he liked her so much. And when we have friend, they all come over and they have kids his age, give 10:01AM them his toys, give them everything, always play with the other kids. Even with the neighbor he always very good with the neighbor.

And he lives with my five daughter and he only brother. And, you know, like, this just -- you know, I have five girls 10:01AM and he's the only one. I have it -- I have three boys before him, two passed away. And after Inas, I have one and he passed away. And when he have a brother, he very happy. And when he die, he sick, like, for maybe a week because he can't wait to see his brother and play with him, because always he like to play with boys and he only have his sister.

And, you know, even when I'm home, he always help me with the clean the house. I take him to anywhere, he always quiet and sit. And, you know, I'm always look for him when he's go, I can't wait to see him back. And, like, my dream to see him finish college and be something good. And he always, you know, like, help for me and for his sister. He take his sister to the movie, to the mall, give the money, work hard. Spent the whole time working.

He start work at age 17 years even when he in high school. After the high school, you know, he went and he, you know, work in supermarket. And then after supermarket, even when he in college, he work in restaurant. And, you know, like, all the people there work with him, they call him, believe me. The manager there, and his name Fakie, and he called me one day and he told me I want to thank you for how you raise Mohamad, he always -- he's not prejudiced, he's helper, you know, like, he help all the people work with him.

And he always smile. He never fight with nobody. Even the school, and the teacher, his teacher he's Jewish, and he been friends to the teacher. He went with the teacher, his

teacher to the mall to the movies, he always enjoy the time. He's not prejudiced, not hating. I don't know what -- why, you know, Mohamad put this word in his -- give -- you know, make him feel like this because I never hear Mohamad hate nobody.

And when we came back 12 or 13 years, we go back to my country. We spent from '87 to 2000, me and my daughter and Mohamad, we went back to my county to visit two months. And Mohamad, when he was there in Jordan, he don't like. He said, no, I like United States. I like America. He not feel comfortable, he cry, he tell me, please, mama, let's go back. When we come back here, you know, after three years, in 2003, I go visit my family there and I ask him to come with me. He said, no, mama, I want to stay here. I don't like there. I hate there. I like here. He like here. He's busy.

He like all kind of people. He's not prejudice. He, you know, like, help the family and the neighbor. And even when I opened the store, he helped me a lot. And even -- I have, you know, like, next door the pizzeria, he ask her if she need any help, help her for free. And, you know, like, always he told his sister be good in the school, don't be prejudiced. You know, like, be with all the people. You know, like, when he worked in the cab, he helped his father. He spent like one hour, two hours spoke with me on the phone, always, you know, he call me.

But when we have the store, when Mahmoud Omar came to him, I don't know what make him change, you know, like, think. I don't like what he say, but I never hear from my son he say that. He not kill nobody. He don't like to kill nobody. If he see blood, he cry. Like Mahmoud Omar, he come to me, he said your son is foolish. He's stupid. He's like baby. He want to just eat and be with you or work. He's not kind of boy he like to, you know, hang out with girl or to go to nightclub or drink or he just straight. And I told my son, I don't want you to be with him. Because he came to my store and he told me I take drugs, I'm a criminal. He assault everybody. He's a criminal. I told my son keep away from him. And he say, I know, mom.

He want to be good. You know, like, he want to be good. He want to leave the drugs. He want to marry. You know, like, I think then his mind. But Mohamad he said, you know, something -- he never say it but he don't mean it, believe me. He just talk and he will never hurt nobody. I know my son. You know, like, in his age maybe sometime, like what he said, maybe he lie to his mom but he don't want to make me angry. But he never lie. In the whole life he never lie to me. But, you know, I think he know he do something not good I will not respect this. But he know, I know my son, he will never hurt nobody. Believe me. When he see my neighbor, you know, scream she needs something, he go to her right away.

You know, like, I'm sorry, because my English, I can't explain a lot of thing. But Mohamad, he work hard and he been good son to me and for his grandmother, grandfather, he always help them. He always give hand for anybody that need help. He good to his sister. And this is the only son I have, believe me. And I spent my life just to raise Mohamad to not hate nobody, to like all kind of people.

That's why we came here. You know, like, you know, our situation, you know, in my country, you know, like, for me, I'm Palestinian and Jordanian and my husband, he's Palestinian. He can't live in Jordan with me or I can't go and live with him in Palestine, that's why we came here, for a better life, for my kids for have good education. I raise my kids goods. Here, like, since '87, like, almost 20 years, me and my husband and my daughter, even my son, we never had no problem, no fight with nobody. Not even -- you know, I went to supermarket, you know, the people look at me because my clothes, they give me dirty look. And I just smile any say, okay, they don't like my clothes, it's okay. I am proud to be a Muslim and I'm proud of my clothes, I like it.

And Islam is the peace. It teach me how to respect a lot of people. You know, maybe sometimes you get angry when, you know, you see your son, he's in the jail, you know, maybe sometime you scream, you know, you make, you know, like you angry, but still my heart clean. I love all the people. I love here in the United States. And I like to be -- like, I am American and I'm proud to be American. And I need to stand American, too, make American stand. I like to help. I like to see this country, big country and justice. I'm sorry, I can't. Thank you.

THE COURT: Thank you. I know how difficult this must be.

MR. CIPPARONE: I don't have any questions, your Honor.

THE COURT: I assume the government has no questions.

MR. HAMMER: No, your Honor.

THE COURT: Anyone else?

MR. CIPPARONE: I would like to have his sister Inas Shnewer address the court.

THE COURT: Ms. Shnewer, please.

Tell us your name, please.

MS. I. SHNEWER: Inas Shnewer, I'm the sister of Mohamad Shnewer.

THE COURT: How old are you?

MS. I. SHNEWER: I'm 20. And I'm currently in Rutgers University and this my sophomore year.

And I just wanted to say what kind of person my brother Mohamad is. Ever since I was born. The only person that I saw was Mohamad. I've been raised with him. And I'm sorry that you didn't get to see another part of Mohamad. The only

part that you saw was the recordings with him and the informant, so I would like to tell you the other part of my brother.

He's a very generous and kind young man. He loves to have fun. He's a loving person. He loves to see everyone laughing. He's always smiling. He loves his family. He loves everyone. He never distinguished between white, black, Jewish or anything else. And it's just sad to see him today here. And I'm -- we are all sure that he is innocent and that you guys didn't get to see the different part of my brother.

And it's just sad seeing, you know, a 16 year old -- a guy that's 16 years older than my brother trying to feed him with bad information. Even though my brother did say some bad things, I'm not going to shy away from that, but he always told us good things about people, about Americans about Jewish people. He's a loving young man. And he always told me and my sisters to be loving to everyone. And he taught us a lot.

My brother even, for instance, one time my neighbor came screaming at my brother for an odd reason and then my brother just hid away from her. So the neighbor went up to my mom and said how did you raise your son? I mean, I cursed at him and I told him bad things and he didn't even look at me, he just ran away and he's very kind of polite. It's odd to see a young man like him not scream and not answer us back.

I just have to tell my brother to be patient and

strong. And you know you're innocent, you have nothing to shy away from. And that's all.

THE COURT: Did you want to ask any questions?

MR. CIPPARONE: Just one, your Honor.

THE COURT: Sure.

MR. CIPPARONE: Inas, I told you, and you're aware obviously, that Mohamad is facing a sentence of potentially life plus an additional 30 years and I've asked the Court in my sentencing memorandum to sentence him to 35 years. Knowing Mohamad as you do, can you tell the Court why, if Mohamad was to serve 35 years, and that's without parole, in jail, you think he's not likely to commit a crime or harm anyone and got out and had some life left after 35 years in jail.

MS. I. SHNEWER: Because before my brother was in prison, as you said earlier, he never had any credible records. My brother, as I said, the only recordings that you heard was with Mahmoud Omar, him stating some bad things. But if my brother were to come out of jail after 35 years, I don't think he would be stupid enough to hang out with people, with criminals like Mahmoud Omar.

And knowing that my brother, how my brother's generous and kind and likes all kinds of people, him coming out of jail after 35 years would let him accomplish the goals that he had originally set up for himself, which is finishing college, being something that he always wanted to be, either a

businessman or he wanted to finish marketing. He can get married, which he really wanted to do the summer that he was arrested. That's what his plan was that summer, to get married and have kids and live a life like all of us, like a normal person would want.

MR. CIPPARONE: Thank you. I have nothing further, your Honor.

THE COURT: You don't have any questions, do you?

MR. HAMMER: No, your Honor.

THE COURT: Thank you.

MS. I. SHNEWER: You're welcome.

MR. CIPPARONE: I hasn't planned this, but his younger sister Lamese did ask me if she could speak. And if that's okay with the Court --

THE COURT: Sure.

MR. CIPPARONE: -- I would like to have her speak and then I'll have one more speaker after her.

THE COURT: Certainly. Good morning, Ms. Shnewer. Would you tell us your full name, please?

MS. L. SHNEWER: Good morning. Lamese Shnewer, sister of Mohamad Shnewer. I'm 14.

Mohamad is my only brother. Since I was born, I was growing up with him.

(Brief Pause.)

THE COURT: Take your time. There's no rush here.

Take your time.

MS. L. SHNEWER: I've grown up with my other sisters and --

(Brief Pause.)

MS. L. SHNEWER: -- my brother never was known as a criminal. When I was growing up with him, my brother was known as a loving person. A person that would love people. A person who always would help people. He loved helping people. He donated money to every -- to the poor. And he always taught me to be a good person to everybody. He never taught me to hate or be racist to anybody. He always told me -- he always told me something right. I looked up to him.

Me and him were very close. We used to spend time in the store that we own. And one time me and him were sitting in the store, this guy came and asked my brother for money and my brother gave him money and food. And he told me him I'm here for you, the store's open for you any time, you can come.

My brother never thought of hating anybody. My brother was never known as a criminal until you guys sent a criminal to him to try putting words in his mouth and try playing with his head. My brother never thought of that. My brother never thought of killing anybody. My brother never killed a fly or kill anybody. If my brother was a criminal, a soldier came with Joseph DeStefano to our house, we opened the house to him, he used to tell my brother about killing people in Iraq.

My brother told him instead of killing, why don't you go help? Why do you like seeing blood? My brother was nice to him. My brother was nice to everybody. My brother never thought of anything like that.

THE COURT: Mr. Cipparone, perhaps you have a question.

MR. CIPPARONE: I have no questions, your Honor.

THE COURT: Okay. The government, I assume, has no questions.

MR. HAMMER: No, your Honor.

THE COURT: Thank you.

MS. L. SHNEWER: Thank you.

MR. CIPPARONE: Finally one more speaker, Salem Elkholy.

THE COURT: Good morning, sir. Would you state your name, please?

MR. ELKHOLY: Good morning. My name is Salem Elkholy, I teach at Burlington County College, I teach Arabic and I teach French. I have a very close relationship with Mohamad and his family, my family and myself. I've known Mohamad for many years. I known him when he was a student at Cherry Hill West, I used to be a substitute teacher there at the time. He was very liked by his teachers and praised by his classmates.

We visited them at home on many occasions. He was very

kind and generous. Honest. At the school he follows directions. Very trustable person. Dependable. And I'm shocked of what I heard. His family is very honest people.

I have many occasion that he came to my house many times to help me fixing things. For example, I have a problem with my stove and a couple things, he came over and he suggested things. He always offer help and help people he knows and people he doesn't know. And my kids, I have three boys, they liked him very much. They always asked they want to go to Mohamad so they can play with him, he knows how to keep them calm, to keep them busy.

I never sense or notice anything that Mohamad would do of what I heard from the evidence that was presented. Mohamad is always honest and decent young man. He was planning to get married and establish a family. I asked him many times how he was doing in college, he said he quit college to help his father financially. And he was very devoted to his family and I'm --

You know, I can assure your Honor, the Court, that Mohamad is full of productivity. After he finish his sentence, he will be a good member in society. He will do his best to help others. And I hope he can fulfill whatever he wanted to do or he planned to do. You know, I know him very well and I never heard anything bad from him all the years that I've known him, he and his family.

MR. CIPPARONE: I have no questions, your Honor.

THE COURT: The government have a question?

MR. HAMMER: No, your Honor.

THE COURT: Sir, thank you very much.

Mr. Cipparone.

MR. CIPPARONE: Thank you, your Honor.

I'll address the 3553 factors to the Court. Obviously, the nature and circumstances of the offense are substantial. They're troublesome. They're disconcerting. And I get that. And I heard Mr. Hammer, you know, recite some of the terrible things that we all heard Mr. Shnewer say during the trial, and I don't want to get drawn into that fight, I didn't bring enough binders, I'm sure everyone will be able to appreciate that.

THE COURT: Thank you.

MR. CIPPARONE: And he said those things there is no getting around, it's a terrible offense, terrible words, terrible potential consequences and I'm not going to argue differently than that.

And that's a factor that the Court I'm sure will weigh very heavily in the sentencing process but it's one of many. And even at the lightest possible sentence the Court can give Mr. Shnewer, and I don't even know that light is the right word, he's facing a floor of 30, plus I'm realistic, I know the Court obviously would give him some additional sentence for the conspiracy, which is why I've asked for 35 years to acknowledge that there has to be and should be separate sentences for both of those two offenses.

But even at that -- and I know the Court doesn't take this lightly, that's a very significant time period in anyone's life. That will divest him of his -- I don't mean this in this potency sense, his fertile years in life. His 24th birthday was yesterday, as your Honor knows from the presentence report, and 35 years from now he will be a much different person I'd submit to the Court.

As Inas I think succinctly and well said it, your Honor got to see one side of Mr. Shnewer during the trial. And that's the nature of a trial, it focuses on what the crimes charged are, what evidence is in support of those and there's very little from the perspective of looking at the person's entire life that is presented during a trial, because of the rules of evidence and because that's not the focus.

But that's the focus now, and if we look at a broader picture of Mr. Shnewer I'd submit that the balance of the 3553 factors does mitigate in favor of a sentence that is not lenient, but that would allow Mr. Shnewer to have some productivity and provide society some productivity. And I'll -- in the context of addressing each of the factors I'll expand on that a little bit.

I heard Mr. Fitzpatrick say yesterday that these

defendants, and I'm -- obviously that included Mr. Shnewer; should not receive leniency because of the work of the FBI in stopping this conspiracy and its object. I'm not asking the Court for -- again, I don't think it's a lenient sentence to get a 35 or even a 40 year sentence, and I'm not in any way suggesting that because the FBI stopped this conspiracy and its object from coming to fruition, that the Court should credit Mr. Shnewer in any way for that.

I'm asking the Court to credit him so to speak at and to sentence him based on who he is, beyond the mere -- not mere, but beyond the facts and circumstances of the nature of the offense.

As the Court heard and as you can see from the presentence report, to the extent that he was capable within his life balancing his work responsibilities, his family responsibilities, he was a charitable person. You heard an example from Lamese, and again I didn't anticipate her speaking, of how he had out of his pocket or out of his store helped homeless people when they would come in. How he was a giving person as Mr. Holey just told the Court in terms of his interaction with others.

That's an indication that he's not the single-minded exclusively hard core terrorist that the -- and I'm looping back to the terrorism enhancement but now we're in a different context; that that guideline and it's

lock-them-up-throw-away-the-key-forever provision is intended to apply to.

Look, those videos that Mr. Hammer referenced and we all saw at trial are hard to watch. They were difficult and troublesome, but I also think that there can be a contrast drawn. The individuals that were depicted as the terrorists in those videos were I would submit to the Court a different kind of terrorist than Mr. Shnewer.

And I don't like using labels but I'm going to use that label because its applicable to the case, the terrorism enhancement, and Mr. Shnewer was not single-mindedly devoted to this plot, this conspiracy.

And your Honor asked the question yesterday of the Government, you know, why should we abandon all potential hope of rehabilitation, that somebody in 30 or 35 or 40 years can't change. I'd respectfully submit that Mr. Shnewer is a person who can, he's already started that process and he's going to address that with your Honor.

And I'll tell the Court because I don't intend unless it's necessary to address the Court again after he speaks, a half hour -- well, more than that now, but when I was speaking with Mr. Shnewer this morning was the first time I heard what he was going to say.

I met with him last week, I asked him to give me a general outline of what he's going to say, but frankly I gave

him no parameters. I told him look, you know what you're facing, this is your day in court, if you want to speak, say whatever you want to say.

I was actually very impressed with what he just read to me, and I think your Honor will be from the perspective of it does show that he's already begun the process of change, and that was not at my prompting and I'll represent that to the Court, these are his words, had nothing to do with anything I said to him.

I think there's evidence even in some of those transcripts, and Mr. Hammer referenced one of them, that there was the conversation that in isolated context sounds horrible where Mr. Shnewer said that it was his dream to go to Palestine and kill Jews in his own land.

The fact that he didn't, and why he didn't according to Mr. Omar, is an indication to the Court that he's a person who is amenable to rehabilitation, who can change, who's not so radicalized that he can't become a productive member of society and abandon his views.

You'll recall Mr. Omar telling -- and I don't even remember if it was on direct or cross-examination, that the reason Mr. Shnewer didn't go to Palestine to kill Jews was because his mother and father dissuaded him from doing that, told him not to. And he didn't. I'd submit that any one of those terrorists we saw in those videos would not have reacted that way.

And that's an indication that he's capable of changing his views or at least his behavior when he's directed in certain ways. And frankly a 35 year sentence will do that. And that's a sentence obviously I've asked the Court to impose.

But that's a hint that he's not incorrigible, that he's not a person that we can just, you know, proverbially bury under the jail and should bury under the jail. And I know that's obviously, you know, not a popular sentiment, but that's not why we're here and I know your Honor appreciates that. But he's somebody who had residual value and can have residual value.

So the history of his prior acts and the absence of his criminal record is telling, and your Honor referenced that he will consider it and I know you will. The Government's brief somewhat -- I forget the word Mr. Hammer used to compliment one of my arguments, but I will say somewhat creatively and I mean that in an appropriate sense, said that, you know, look, he's had advantages, he doesn't have a prior record and that should work to his disadvantage. That's the first time I've heard that frankly.

That's a little bit of a stretch, and I mean that respectfully. That's a positive factor, that he's got no prior contact with the criminal justice system. And I don't

see spinning it any other way than a fair spin.

He's got no mental health history that would adversely impact on his ability to be rehabilitated. He's got no history of substance abuse. He has a high school education, some college which he discontinued as you heard and as you know from the trial to support his family.

And again in the evidence there are clues and indications that Mr. Shnewer is amenable to rehabilitation, that he's not the single-minded hard core incorrigible jihadist that the life plus 30 sentence would really be intended to affect.

He, for example, only spent 24 hours or less at this second Poconos training session because he needed to go back to work to continue to assist his family financially.

If he was the extremist hard core jihadist who would stop at nothing to accomplish these goals that would be his single-minded exclusive direction of action. But we saw a dichotomy even in the evidence limited as it is in the context of a trial that was presented by the Government.

That's an indication that Mr. Shnewer is amenable to rehabilitation, he had other priorities in life as well. I'm not suggesting that, you know, he didn't spend a lot of time with Mr. Omar, he didn't drive by Fort Dix, Dover any other places, he did, he took time to do those things too, I'm not shying away from that.

But there was a balance, unlike again coming back to those videos and, you know, at times it maybe got campy in terms of the way I addressed it as trial, but those guys in their physical calisthenics and their training. They were single-minded hard core jihadists who weren't stopping their training day to go drive their cab or, you know, work in the family's meet market or drive their sister to the mall which again we heard testimony from Agent Parmigiani happened. Mr. Shnewer had -- you know, was living in a sense two lives. But it shows that he can also lead a productive life.

His employment history I don't need to belabor, your Honor heard a lot about it at trial, the presentence report does a good job of laying that and his mother also addressed it since age 17 he's been productively employed.

At times working basically double shifts, working in the family store during the day in Pennsauken and driving the cab at night to support his family.

His family life was productive and positive, you heard about that today and you heard about it at trial; no prior criminal record.

So I'd submit that when your Honor looks at all those factors and sentences the whole person, a 35 year sentence, respectfully is sufficient but not greater than necessary to meet all the attendant purposes of sentencing.

The first being obviously specific deterrence. He's

24 years old as he sits here today; if your Honor were to sentence him to the sentence I've requested of 35 years, he'd be in his mid to late 50s, accounting for potential good time behavior and two years in pretrial detention.

He will look -- despite what sister said a few moments ago it's fairly unlikely that if he's released at that time he'll ever get married. He won't be, and I don't mean this disrespectfully to him, the best catch in terms of normal societal perspective.

It's very unlikely he'd ever father children with that 35 year history behind him. It's very unlikely that he'll ultimately -- and hopefully he will continue and pursue his education, but he will ultimately have the kind of opportunities that an otherwise situated 24 year old young man would have had, and that's his own doing and I get that.

But nonetheless, 35 years is a long time, it's 11 years more than he's been alive. And if we all think back at least those of us who are over 35 to all the life's events that have happened in 35 years, it's a significant punishment, a significant specific deterrence.

His parents if we look at normal life expectancy as I said in my brief in all likelihood will be very close if not deceased by the time he's released. His five sisters likely will all be married with children that he won't know except maybe through glass once a month. All very specific deterrent effects that that sentence would have.

Obviously your Honor also has to look at general deterrence, and again I think your Honor said this yesterday, is any sentence you impose ever going to deter the hard core radicalized jihadist like in those videos who are willing to blow themselves up and die of course not.

So I'd submit we have the kind of marginalize those people from the general deterrent effect. Because candidly there is no sentence your Honor can impose that would deter those minded persons.

So if we're looking to deter persons who are like Mr. Shnewer for the same reasons I just said who have a life, who have a family who have -- who enjoy that family, who are devoted to it, who aren't willing to sacrifice all for you know, jihad, and he wasn't -- again the examples I gave, the training was limited by his work, with his family. His need to help support them.

If we're trying to deter that kind of person who I'd submit can be deterred, a 35 year sentence is adequate to do that I'd submit respectfully.

And for the same reasons I think it's certainly punitive with respect to Mr. Shnewer, for all those reasons I just indicated it certainly would be a punitive sentence. No one I think rationally could ever say that a 35 year sentence is light for anybody.

You know, I had a sentencing last week, where my client received life plus 10 years. It was in this courthouse, and that individual had actually been convicted of a murder for hire, pointed a gun at someone, shot and killed him, shot him three times.

And ironically -- and again, I know the Government in its brief says it's a predictable response for the defense to say that nobody died here and they didn't, and I have to be mindful for that and I'd be remiss if I didn't mention it. I keep it in context and I know the context of this. But that individual got life plus 10 years; Mr. Shnewer is facing life plus 30 on the top end.

I had a sentencing last year where an individual robbed six -- five banks and a liquor store, federal sentencing, discharged the gun during one of them, had a prior conviction of stabbing someone in the chest. After he was arrested for the bank robbery he was being held in the FDC and smuggled out a razor blade into the federal building in Philadelphia where he then tried to sexually assault his then female court appointed lawyer and I was subsequently appointed to represent him in both cases. I'm know you're saying how does he get all these easy cases --

THE COURT: Right.

MR. CIPPARONE: I'm a magnet for them apparently.

THE COURT: Right.

MR. CIPPARONE: And that individual got 890 some months in jail. And I keep that in context in my mind when I'm thinking about what sentence should I urge the Court for a client because I try to be objective, obviously I'm an advocate, obviously I have a job to do and I try to do that zealously.

But I do try to also be reasonable and rational and objective to an extent when I make presentations to the Court. And Mr. Shnewer is somebody who can be rehabilitated. And I submit that considering all those factors and the others I've referenced in my brief, the appropriate fair and just sentence is 30 years which the Court has to give him at a minimum, on the Count 4 offense, and an additional five years for the conspiracy offense of which he's been convicted in Count 1.

And unless your Honor has questions of me I'm willing to ask Mr. Shnewer to address the Court if he wishes.

THE COURT: No, I don't have any questions. Thank you.

MR. CIPPARONE: Thank you, your Honor.

THE COURT: Mr. Shnewer, you have an absolute right to speak at this time. If you chose not to I won't hold it against you, but if you have something to say now is the time to say it.

Mr. Cipparone, will you bring that microphone over toward him so we can all here what he has to say.

MR. CIPPARONE: Sure.

THE COURT: Thank you.

THE DEFENDANT: First and foremost, I'd like to apologize to my mother, father, and my sisters for putting them through this hardship. I also like to apologize to my co-defendants, and their families for what they've gone through.

I put the majority of the blame on myself. I still proclaim our innocence, me and my co-defendants of course. Yes, I spoke to Mr. Omar, but I never intended on acting upon those words, and more importantly I never discussed any attack or killing of U.S. soldiers to anyone in general, and my co-defendants specifically.

The only such dialogue was between me and Mr. Omar. Mr. Omar also knew the others, didn't know of our conversations, and that's why he didn't approach any of them clearly and directly about any attack on a military installation.

I led a positive life before meeting Mr. Omar. I just had opened my parents' butcher shop and was getting ready to get married and start a family. I never got in trouble with the law, before or during the time of this investigation.

I worked long hours trying to help my family, including some days I'd be away from home days at a time trying to make ends meet.

I had many responsibilities that I take care of, as best as I can you humanly do. Even though I spoke about attacking the military, I didn't intend on carrying those words out. I was more worried about my work and my family.

For example, the so-called training trip to Poconos, I was there for less than 24 hours. My reason was because I had to work.

Anytime Mr. Omar called me I was working. I was going along with Mr. Omar and adding ideas because I wanted to fit in with him. I was too embarrassed and intimidated to tell him that all the time I spent talking to him I didn't mean it. I thought he might not speak to me or even worse hang out with me.

I tried to give him indirect signs, but he wasn't letting up. So I tried to tell him directly on the 30th of March 2007, but ultimately coward it up.

Even when the weapons were mentioned I said yeah I'll buy them. But then when he said he was going to bring them I backed away. I was hoping that he'd get the point and go away. When that didn't happen I just avoided him as much as I can. That was the case summarized how I view it.

As for the Government said -- as for what the Government says, once a jihadist always a jihadist, I wouldn't know. I don't consider myself as jihadist. I might have spoken like a jihadist, but I definitely don't have what it

takes to be a jihadist. Because I don't see myself ever taking another person's life.

I can't even see myself saying those words now. Let alone acting upon them. If I do get another chance I will definitely not take it for granted. I will lead a healthy positive life, and I'll be a valuable asset to any society I live in.

I believe I deserve a second chance at life. After being incarcerated for two years which have felt an eternity without my family, I've learned many things; the first and most important lesson is that I should never lie, no matter how much it hurts, or what the consequences are.

I also learned I could never take another person's life because of how much else is taken with one person's life, and how much of a loss one person's life is, not only to his family but also to society.

I've learned the true meaning behind the verses of iman, which says whoever saves one life it's as if he's saved all of humanity and whoever takes one life it's as if he's taken all of humanity.

I saw the effects on my family when I was taken from them and I'd never be able to do that to anyone after seeing that effect personally. My family was always my priority. More so now than ever.

I learned the true meaning of life and what it means

to have a caring supportive family. I've always considered myself a great family man who's taking care of his family whenever -- whenever I could do so.

All I want is to have a productive life down the line even though I might never get married or have kids, which hurts my soul every time I think about it.

I learned that even the words that don't mean anything to me, might mean a lot to others and for that I now know the effects of my words.

These last two years away from my family and loved ones have felt like a lifetime. And alone enough, a deterrent enough to let me know the seriousness of these charges.

If I get a second chance at life you won't have to worry about me breaking any laws. There's nothing in the world worth spending a night in jail for. Believe me, this is one lesson that I'll never forget.

I can't even comprehend the fact that I'm going to be removed from my family for any longer than I've already had to live through. Thank you.

THE COURT: Thank you.

Before I get to the sentence, I assume Mr. Cipparone, that you object to the restitution obligation?

MR. CIPPARONE: Yes, your Honor, for the reasons set forth in my submissions.

THE COURT: All right. And the Government thinks

probation got the calculation correct.

MR. HAMMER: That's correct, your Honor.

THE COURT: Well, I will make a finding as I have in the previous defendants, that the probation office finding is supported by the evidence in the case. I think they made a reasonable attempt to estimate the actual loss to the victims in this case, and I think $125,000 is the right number and there will be a restitution obligation.

All right. I've resolved the guidelines issues and made findings on the terrorism enhancement, official victim enhancement, and we've discussed Mr. Cipparone's application for a variance and I denied that.

So, we're left at a 51, with a criminal history category of six. And as I've said in the other cases, the criminal history category really becomes irrelevant at a level 51.

So I turn now to the factors under 3553. The first and most important in all these cases is the nature and circumstances of the offense, and the history and characteristics of the defendant.

As has been mentioned he has no criminal record whatsoever. He has four violations at FDC Philadelphia for refusing to obey an order and possessing an unauthorized item and destroying property, which are not terribly significant.

He was born in Jordan, lived in Cherry Hill;

interesting, interesting family history. His father was arrested in Palestine twice by the Israelis. Claims that Israel wanted him to spy on his fellow Muslims, which he refused. He relocated to Jordan and the Jordanian officials thought he was an Israeli spy.

Moved to Saudi Arabia and eventually came to the United States, settled in Philadelphia and moved to Cherry Hill in 1996.

Mr. Shnewer became a naturalized U.S. citizen in 2004. We know it's a family -- and these are all so tragic and so sad. The destruction of these families because of what these young men have done.

One of his sisters is married to one of the Dukas. He's single, has no children. No drug or alcohol use or abuse. Graduated from Cherry Hill High School West, was a fair student; has some college at Camden County College.

He has a cab driver's license, worked as a cab driver; worked at the food market; worked as a waiter at a restaurant in Marlton; worked for Cingular and Verizon; on a whole a fairly positive life to this point.

But then we turn to the nature of the offense, and the Government is correct, he was the epicenter of this conspiracy. He's the one who chose Fort Dix, he emphasized how easy this attack would be; because Sadam knows it like the back to his hand.

Dreamed of killing Jews, and that's not the only reference in the tapes. He did not have kind words for Jewish people.

He did the surveillances. And some of the things he said are just horrifying. He's very clear about the reasons why they wanted to kill American soldiers, and destroy American buildings.

Eliminate any feeling that they have achieved anything with this war on terror. Talked about attacking the national guard armory in Cherry Hill, killing them all and taking the weapons they need. And the videos; my gosh, the videos, just awful stuff. And he seemed the revel in that stuff.

He says today he can't believe he said some of these things because he couldn't consider taking another person's life. All he talked about -- this wasn't a one-time incident; all he talked about was killing people, how best to do that, how to destroy things. And why it was important to kill and destroy.

And I agree with his family, he's an entirely different person that they seemed to know, but that's who he is. And that's what he did.

There's no question in my mind he was motivated by hatred of Jews and Americans. He desired to kill, he agreed to kill, he planned to kill.

This is a very serious crime. As I have stated repeatedly, it's the most serious crime I can imagine under the guidelines. It's clear the Commission wanted to punish this crime severely.

In order to promote respect for the law as to deterrence, I hear what he says; of course I hear every defendant tell me they'll never commit another crime.

And I also heard the months after months of tapes. Which indicates to me that he is so deeply committed to this ideology and this desire to kill that he can't be rehabilitated.

The public needs to be protected from him, because he will commit other crimes if given a chance.

I have reviewed the sentences that are available; obviously we spent a lot of time talking about the guidelines, and the policy statements in the guidelines. The sentence disparity is really not an issue in this case. Restitution as I have said will be ordered. I am left with a firm conclusion as difficult as it is that only a sentence of life is sufficient to accomplish the goals of the law.

Therefore, pursuant to the Sentencing Reform Act of 1984, it's the judgment of this court, that Mohamad Ibrahim Shnewer is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of life on Count one, a term of 360 months on Count four to be served consecutively to

produce a term of imprisonment of lifeless, plus 360 months. If released from imprisonment, he's place on supervised release for a term of life plus five years. That's lifetime supervision on Count one, and five years on Count four all to run consecutively. Within 72 hours of release from the Bureau of Prisons, he shall report in person to the probation office in the district in which he's released. He shall not commit any other Federal, State of Local crime. He shall not possess any firearm or other dangerous device. He shall not possess any illegal controlled substance and shall comply with the other standard conditions adopted by this court. He must submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by Probation. Because of the restitution obligation, the amount of a hundred 25 thousand dollars he must cooperate with the U. S. Probation in the investigation of his financial dealings and provide full disclosure of his financial records. He is prohibited from incurring any new credit charges or opening additional lines of credit without approval of Probation, unless he's in compliance with a payment schedule, and he cannot incumber or liquidate any assets unless it's to pay the restitution obligation or otherwise has the express approval of the Court. He must cooperate in the collection of DNA as directed by Probation. I will waive any interest requirement on the restitution obligation. Payments must be paid to the U. S. Treasury and forwarded to the Clerk of the Court for distribution to the Department of the Army. This is the total amount due to the victim for this loss. His restitution obligation is not affected by any restitution payments made by other defendants, except that he shall not have to make any further payments once all the amount is paid by all the defendants. This order applies to other defendants in this case. I do recommend he participate the Bureau of Prisons Inmate Financial Responsibility Program, and pay $25 every three months of the. In the event that he is released from prison, and he hasn't paid the restitution obligation, he must pay at least $500 a month starting 30 days after release from confinement. He does not have ability to pay a fine in addition to restitution, therefore, there will be no fine. However, he must pay total special assessment of $200 which is due immediately. And he must notify the U. S. Attorney of any change in address within 30 days so long as any portion of the restitution remains unpaid.

Mr. Shnewer, you have a right to appeal this sentence and conviction in this matter, but you must take your appeal within ten days of today.

We'll take a 15 minute break and we will resume with Mr. Tatar in 15 minutes. Thank you.

(The matter was then concluded)

C E R T I F I C A T E.

I, **Carl J. Nami, C.S.R.**, Official United States Court Reporter and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.

____

CARL J. NAMI, C.S.R.
Certificate No. 557
Date: April 29, 2009

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

-vs- CRIMINAL NUMBER

SERDAR TATAR, 07-CR-00459

Defendant

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
Date April 29, 2009

B E F O R E: THE HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

RALPH MARRA, JR.
UNITED STATES ATTORNEY
BY WILLIAM E. FITZPATRICK
MICHAEL A. HAMMER
ASSISTANT UNITED STATES ATTORNEYS

RICHARD SPARACO, ESQUIRE
Attorney for Defendant Serdar Tatar

Carl J. Nami, CSR
Official Court Reporter
New Jersey CSR #557

(Open court)

THE DEPUTY COURT CLERK: All rise.

THE COURT: Have a seat everybody, please.

(Defendant Serdar Tatar present).

11 11AM THE COURT: All right. This is the matter of United States versus Tatar. We'll start with the appearance of counsel, please. For the Government.

MR. FITZPATRICK: William Fitzpatrick and Michael Hammer for the United States, Your Honor.

11 11AM MR. SPARACO: Good morning, Your Honor. Richard Sparaco on behalf of Serdar Tatar.

THE COURT: Mr. Sparaco, have you and your client had sufficient opportunity to review the pre-sentence investigation report?

11 11AM MR. SPARACO: Yes, we have, Your Honor.

THE COURT: And other than the issues that you raise with the Probation Department, which we will deal with any or anything else you want to note about it on the record.

MR. SPARACO: Nothing in addition to what I've

11 12AM already raised, Your Honor.

THE COURT: All right. How about the government? Have you had sufficient to review the pre-sentence report?

MR. FITZPATRICK: Yes.

THE COURT: All right. We'll get to the objections

11 12AM in a second. Mr. Tatar was convicted on Count one, only

charged on count one with conspiracy for which he --

MR. SPARACO: That's not correct, Judge. He was charged.

THE COURT: That's right. Thank you very much.

11 12AM You're right. I was focusing on the weapons offenses.

MR. SPARACO: Yes.

THE COURT: Because that's what makes the consecutive. It's been a long two days. Anyway, the Probation Office has with the others calculated a starting

11 12AM point of the Guidelines of 33, add six for the official victim enhancement and 12 for terrorism enhancement. He has criminal history category on his own of one but it's increased under the Guidelines to six.

All right. Mr. Sparaco, let's talk about the

11 13AM objections, if you want to put them on the record.

MR. SPARACO: Thank you, Your Honor. As Your Honor just indicated it's been a long two days for you and you've already heard from my esteemed colleagues on many of the issues that I raised in my sentencing memo and in my

11 13AM objections to the Presentence Report and, of course, the arguments today would be almost identical to the those of my cocounsel. With regard to the 3(a)1.2 official victim enhancement. Mr. Tatar's situation may be a little different from everyone else in this case and I would argue that the

11 13AM additional argument with regard to 3(a)1.2 the motivational

factor because Mr. Tatar never used, uses words such as Jihad Mujihadeen. And it's not really clear, crystal clear I should say. I know the court is coming away with the impression that the motivational aspect of these, of that enhancement is it

11 14AM was because of the official victim characteristics of the victim is that why we have this enhancement, but Mr. Tatar like I said it's not really clear because it's not really explicit but I would agree that the implications are that it would apply. And as far as 3(a)1.4 terror enhancement, Judge,

11 14AM counsel has argued this ad nauseam and, Your Honor, has already ruled only that. So I'm going to move on to my other objection and it was in my objections to the pre-sentence report. It didn't make it into my memo was the minor role adjustment or minimal role adjustment which overlaps with the

11 14AM 3553(a) arguments but what I'll do is I'll argue that now when I speak on 3553 I will just incorporate what I'm saying right now.

THE COURT: Good.

MR. SPARACO: So, for minor minimal role objection, I

11 15AM submit that Mr. Tatar was the least involved in this case. He was not involved at all with any of the Shnewer surveillance of the military bases. He didn't even have knowledge of Mr. Shnewer going out and surveilling these bases. Mr. Shnewer had shown several videos to Mahmoud Omar and the other

11 15AM co-defendants. As you know from the trial, we were able to

get a limiting instruction to the jury that the violent beheading videos were not to be used against Mr., Tatar for purposes of determining his guilt or innocence, but likewise there were other videos, propaganda videos that were not observed by Mr. Tatar. There was no evidence that he observed those videos. So again, just as another aspect of this case Mr. Tatar wasn't involved in.

THE COURT: The only tape he was involved in was that audio tape.

MR. SPARACO: That's correct. That was March the 9, 2007.

THE COURT: Right.

MR. SPARACO: The court will recall then that he was invited there by Dritan Duka to listen to the tape. He didn't really comment on the tape at the end he kept on saying I got to go. He wanted to just get home at that point.

With regard to the training in the Poconos in 2007. Now Mr. Tatar didn't go. Why? Because he needed to work. I submit that if Mr. Tatar was very much interested in carrying out or being a strong part of this conspiracy, he wouldn't have missed an important session such as the training out in the Poconos for a whole week. He is not involved in any thoughts of obtaining a Fatwa. This is all part of Eljvir Duka and Shnewer's ideas about needing a Fatwa before they could proceed. Mr. Tatar isn't involved in that. He doesn't

know anything about that. Eljvir Duka downloading maps off the internet. He doesn't know about that. Yes, Mr. Tatar does give a map to Omar. But he doesn't follow up after giving that map. He's -- there's several conversations between Omar and Shnewer about lets' get Serdar to come explain this plan to us. Mr. Tatar is not involved in that at all. Doesn't come. Doesn't show them where on the map would be the strategic places to hit. And, lastly, and I know that the co-defendants, this is a major part of their case, and a major part of this conspiracy is that AK47's machine guns were purchased on May 7, 2007. Although Mr. Tatar wasn't charged with the purchase of those guns or attempted purchase of the guns, that was a major part of this conspiracy, a major piece of evidence in this conspiracy and it's crystal clear that Mr. Tatar had absolutely no knowledge that his codefendants were obtaining machine guns on that particular date.

So I would submit and like I said I'm going to incorporate this in my 3553 argument, that he's entitled to a role adjustment because of his least involvement in this case.

THE COURT: Let me hear from the government in response to that, and then we'll get to your next argument.

MR. FITZPATRICK: Your Honor, obviously whatever the Court's pleasure. So much of my argument as I understand it what counsel primarily is arguing is the minor they role.

THE COURT: Right.

MR. FITZPATRICK: Is contained within my overall presentation to the court in 3553(a). If the court would like maybe it will expedite things if I just make one presentation to Your Honor and incorporate all that or unless you'd like to do the --

THE COURT: Well, no. I'll just make the ruling. I know what you're going to say about the facts and the facts are sufficient here that he is not a minimal nor minor participant in this. He's not substantially less culpable than the average participants in this. And I agree that Mr. Sparaco that he -- there isn't the same quantum of evidence particularly as to the statements of intent to kill and things of that as there are with the other defendants. Nevertheless, he is not so insignificant that he qualifies for an adjustment under the Guidelines. Certainly it's a factor under 3553. And the other adjustments are variances you want to talk about. There's the imperfect withdrawal you raise.

MR. SPARACO: I did, Your Honor.

THE COURT: Do you want to talk about that?

MR. SPARACO: Yes, briefly, I want to talk about that. I know this is an unusual fact pattern in this case. To this day, I can't for the life of me explain, and I know the government's position is that Serdar went to the Philadelphia Police because he was trying to weed out an informant. I don't accept that, Judge. I don't think the

jury had to accept my arguments and the judge knows what my strategy, my position was at trial was that he is trying to report an act of terrorism. It just doesn't make any sense for Mr. Tatar to go to a law enforcement officer and reveal himself even though the government's position was that he didn't reveal the co-defendants. He did reveal himself to law enforcement. And did subsequently reveal himself to the FBI. And subsequent to and for the life of me I don't know why the map was turned over on November 28th, except that he possibly wanted to keep Omar close to him so he could gather some more information. But it's clear that last November 28th, he drops off the map, so-to-speak. He is not part of any training in February. He's not part of the gun purchase. The only discussions he had, he has is on the March 9, 2007 gathering to listen to the Constance of Jihad. And I don't even think he knew that it was the Constance of Jihad. The beginning of the lecture he says what's this called. It's the Constance of Jihad. Oh, okay. Then he watches the Constance of Jihad and he says I got to go. I know where withdrawal is and I, of course he did not reveal everything that he knew about the conspiracy. Everything he did himself, including giving the map. So I think that the Guidelines don't take into consideration this unique fact scenario where he does these actions. And yet is convicted of a conspiracy to kill American military personnel which could have been based solely on Omar's statement to him, listen, we want to do something to Fort Dix. And my client says, you want some maps. I can give you some maps. And then you have an overt act actually giving over the map and that's enough for him to be convicted of the conspiracy. But I believe that the Guidelines don't take into consideration in unique fact scenario when he simply reveals himself to the police, reveals himself to the FBI and then basically withdraws after that.

THE COURT: Well, I've got to tell you that I know what the government is going to say. And I would if I needed to find by a preponderance of the evidence that their theory is correct. I do believe that he went to the police for the purpose of trying to find out what, if anything, he could about Omar's status as an informant. I read the letter and reread the letter and reread the letter that he wrote for probation on his life story. And how he essentially wanted to be a junior G-man and thought that when Omar approached him, that he was, he Omar was a real terrorist and that Mr. Tatar could help smoke him out as a terrorist for the FBI. He does acknowledge in that letter that he lied to the FBI and the police. He states his reasons which are not terribly convincing. He says he just forgot to tell them about Shnewer. And that he lied about the map because he, for lack of a better term I guess he didn't feel the FBI was showing him such respect. He thought they were now targeting him.

It's all, all difficult to accept. And so, the lying to the police officer and the FBI I think is fatal to your claim of withdrawal from the conspiracy. And I'm going to deny your request for a variance for that.

MR. SPARACO: Thank you, Your Honor. I have nothing further except for the 3553.

THE COURT: All right. Well then, let's hear here from the Government on your position on sentencing and the 3553 factors.

MR. FITZPATRICK: Your Honor, the government's position with respect to sentencing is that a reasonable and appropriate sentence for this defendant is life imprisonment under the statutory factors enumerated in 3553(a). And this is why.

The United States would first obviously accept and adopt the Court's observation which is completely correct from any perspective that the quantum of evidence and the nature of the evidence is different from the other four defendants to Mr. Tatar. Now what I would offer the Court is there are reasons for that. The nature of the relationship between the other four defendants, particularly the three Duka defendants and Mr. Bakalli, the nature of the relationship between Mr. Shnewer and Mr. Omar was different than the nature of the relationship between this defendant Mr. Tatar and either of the cooperating witnesses who are able to record the innermost

thoughts and to identify the intent and the true feelings of the other defendants. But what that does, the position that that puts what I would respectfully submit, Your Honor, in is inferring from the other evidence the other statements what this defendant's true character is, what his true intent was and from that, identify the full scope of his participation in the conspiracy and his full commitment to the object of this conspiracy. Because what I would submit, Your Honor, is the life sentence is based not only on the obvious fact that he gave the map over and the terrible consequences from which that map was going to be used, but just the full nature and the full scope of his participation and I think where Mr. Tatar really suffers is when we view this really on the timing, because Mr. Tatar's participation does not begin in October of 2006, October 31st when the discussion of the map first occurs. What we know about Mr. Tatar is that he participated in this January 2006 Pocono trip, the same tripe that began this entire investigation. What we know about Mr. Tatar is also in early 2006, he purchased this CX4 Storm semiautomatic rifle, the Mossberg 12-gauge shotgun. He purchased them in his name to be used by the Dukas and by Mr. Shnewer. The CX4, the very same weapon that Dritan Duka later on described is the gun that they used for city fighting.

We jump ahead to where Omar really begins to penetrate the heart of this conspiracy. A few months, a few weeks

rather, after he really starts to record Mr. Shnewer, what happens is Shnewer talks on August 1st for the first time about attacking Fort Dix. On August 2nd, for the first time he identifies those that he plans to carry out the attack with. And he specifically mentions the three Duka defendants and Mr. Tatar. That didn't come out of the blue. That came based on the nature of the prior relationship between Shnewer, the Dukas, between Shnewer and Tatar. On August 4th is when Shnewer says about Mr. Tatar that he is the first among us. He was ready for Jihad before us. Again, that came from the nature of the relationship between them. And, yes, does it cause the trier of fact, whether the jury or the court at a sentencing hearing, to infer what went on before. Yes. But the nature and the circumstances surrounding that statement and what happens afterward completely corroborates and completely support Shnewer's observation. On August 11th, Shnewer says something that is completely verifiable. Completely corroborated when he tells Omar that Tatar bought those weapons for him in early 06. We know that to be true. The same weapons again that were used not only in the 06 Pocono trip but the 07 Pocono trip as well. So when Shnewer says about Tatar that he is the first among us, he was ready for Jihad before I was, it speaks volumes about his character and his commitment to the object of this conspiracy.

Now, Your Honor, taking a little bit out of chronology.

To jump ahead until March 9th and March 10th of 2007. Seven months we hear the same thing from a totally different angle, a totally different source, totally different conspirators talking to an entirely different cooperator. Here we gave Dritan Duka also telling us in a recorded conversation about his relationship with Tatar. About what he understands Tatar's commitment to this conspiracy to be. His commitment to kill American soldiers. That he was ready to do this by joining the military and killing from within. Now, of course, we know he did try to join the military and was rejected. So that part of it is corroborated just like Shnewer's earlier observation was corroborated and they talk about how intent he was, how serious he was about killing American soldiers and doing it from within. And then we corroborate that statement with some of Tatar's own words where he does tell the cooperator there's lot you can do within. You can get inside information. Clearly showing the same type of mind set that Dritan Duka was referring to during his statements on March 10th.

Now, despite what Mr. Sparaco says and this is a fair time if I could just take a quick time out. Mr. Sparaco has done a phenomenal job in the government's opinion in terms of representing Mr. Tatar zealously, effectively. There's just so much he can do with the facts that are before him but there is nothing else any other lawyer in the State of New Jersey

could have done that Mr. Sparaco didn't do. And you know but he can't change the facts and the facts are that Mr. Tatar does re-engage. He is there on March 9th when they listen to the Constance on the Path of Jihad. He does talk about the Constance on the Path of Jihad and he says something incredibly telling. He says, we need to prepare as soldiers. That's shows you where his mind set is. It shows you what I would respectfully offer to the court for sentencing purposes and for a preponderance it corroborates Shnewer's observations seven months earlier. It corroborates the other set of observations from the other side of the conspiracy that next day. That this is where he is. And this is his commitment to Jihad. This is his commitment to the object of the conspiracy. And this is the reason why a life sentence is justified for Mr. Tatar as well because he's not a hanger on. He's not a peripheral player. He is somebody who is very core is committed to the object of this conspiracy and that is what justifies such an unusually but appropriate harsh sentence in this case. But do take a step back to that period of time from October 31st of 06 through November 28th of 06. That really is without a doubt the most definitive, clear, expression of his participation in this conspiracy from a legal standpoint and his commitment into this conspiracy from what I would suggest from a sentencing standpoint as well. One issue that has always been a little confused by defense

counsel and it's not, nothing improper. It's just the product of good advocacy is where the idea of the map came from. Now if we go back to October 31st of 06, if we look at the status of the investigation at that point, what does the FBI know. They know he was there in January of 2006. They know that he bought these weapons. They know that Shnewer has identified him as an attacker. They know he's been identified by Shnewer as the first among us. Ready for Jihad before I am. And so, with that in mind, with that in mind, Omar simply tells him that Omar wants to get back at this country for what it's done to him. Omar clearly tells this defendant he clearly tells this defendant that he wants to attack Fort Dix. And again, why does he pick Fort Dix? Because Shnewer picked Fort Dix. Shnewer picked Fort Dix because of his relationship with Tatar because quote, Sadon knows it like the back of his hand. This is not something that was just randomly placed out. This is based on the nature of the investigation to this point. And that's all he says. That's all he says is I want to get back at this country. He's just laying it out there for this defendant to either inculpate himself or exculpate himself and he takes it and he inculpates himself as much as he possibly can because he then repeats looking at Government's Exhibit 617B, beginning on page three. He then wants to make sure that he got it right. He says to Omar: If you want to make them pay for something they did to you. Yeah. For

everybody. For Muslim, for, for wherever they did because I'm leaving in March. Okay. He says I understand what you're saying. Okay. Omar says: Me and Mohamad. Then the first time maps comes up. Serdar says you need maps. How's the work. Omar says: How does it work. Serdar says: How does it work. How is Fort Dix. How can we do it. Tatar says: I will give you a map. No ambiguity. No if ands or buts. The idea comes from him knowing what that map is going to be used for. No hesitation, no qualification. Yet the only reason, if you accept counsel's argument, that a map is at issue to begin with, is because Tatar made it an issue. He doesn't have to -- why is he telling the FBI or the Philadelphia Police Department about an issue that he created. Makes no sense. Because ir is simply not true. And it's not true because he was a willing and aggressive participant in this conspiracy. It was his idea. Omar still doesn't get it. You mean like a map on the computer? He says no, no, no. I have a map. I have a map. He is in this with both feet. On November 9th he again says I'll get you the map. I'll get you the map.

And then on November 12th, prosecutors, defense attorneys, and I respectfully submit, courts, could probably go an entire career and not have as solidly and inculpatory conspiratorial statement as this, I'm in. Honestly I'm in. Yes, it's a good thing to do. He's basically assenting to understanding the scope of the conspiracy, the object of the conspiracy, and now the third prong, the membership of the conspiracy has clearly, without a doubt from his own words, grown by one. Those are not the words of somebody who plays a peripheral role or who is a hanger on.

THE COURT: Respectfully, I don't think Mr. Sparaco's arguing that he's not guilty, he's just arguing he's less guilty.

MR. FITZPATRICK: Well, I understand that. I understand that. But his sentence under 3553(a), may very well be driven by the level of his participation, by the level of his commitment and he can still be guilty. And, as I understand Mr. Sparaco's brief, is that, you know, he just plays a different role. He plays -- he's less culpable than the other four and here's why.

And my argument to the Court is by assenting to the object of the conspiracy, by being the source of the idea for the map, by jumping in this with both feet. He's jumping in and he's locking arms with his codefendants in a clear and unambiguous way, which I think that refutes the argument that his level of culpability is anything less than the three Duka brothers or Shnewer.

THE COURT: What do you think motivated Mr. Tartar? Let's assume that he was committed to this plot and he would carried it out. What do you think motivated him and what's

your evidence to support that? Motivated him. Him in particular.

MR. FITZPATRICK: Yes, sir. I think we need to go no further than his own words. On November 28th he tells us what motivates him. On November 28th, the day he gives the map to Omar. The same day he goes at Omar about are you an FBI agent? You know, how do I know you're not a FBI agent? Are you an informant? This is big. This is serious. Can you get me out of the country after this is done? Then he gives us a clear and unambiguous expression of what motivates. He says, I'm going to do it. I'm going to do. I don't care if I die. I don't care if I go to jail. I'm going to do it in the name of Allah. That's what motivates him. What I would respectfully offer to the Court is that Mr. Tatar was motivated for the same reason as the other four defendants, it was a perception, a perception, their perception that this was their religious duty.

This is not a crime, as most crimes that your Honor sees or that we see, that's motivated by money or that is motivated by some other financial gain. This is a crime, and this is what makes this different, it makes it undeterrable, it makes the defendants undeterrable, this was motivated by a belief that they were duty bound to do this. He tells you I'm doing this in the name of Allah. He gives us his motive right there, your Honor.

THE COURT: That's the only evidence that I'm aware of in which he invokes the name of Allah. I mean, the other defendants, they're all over the place about this is a religious duty. And I know some of his codefendants said he's ready for Jihad and they talk about Jihad. But he never really does, does he?

MR. FITZPATRICK: That's correct. And again, that goes back to the first point I made to the Court, which is you're absolutely right, the quantity and the nature of the evidence is different. And I think the reason why we don't have sort of the expressions of theological belief is the fact that he doesn't have a relationship with Omar the way Shnewer does. He's distrustful of Omar. He doesn't have the relationship with Bakalli the way the Dukas do. He just never really new Bakalli. So we don't have -- we don't have the nature of a clear and unambiguous -- you know, a clear and unambiguous affirmation of his religious perspective other than I'm doing it in name of Allah.

Now, of course, as Mr. Hammer just reminded me, also on March 9th when they watch the Constance of Jihad, and of course the thrust of the Constance of Jihad is it is your duty to attack now, it is your duty of all Muslims to attack now, this is why. Tatar does respond a lot of people are waking up, brother, that's the statement that's on Page 9, Line 28 of Government's Exhibit 853D. So again, in response to that type

of theological inspiration, his response is consistent, I would offer, with his earlier statement I'm doing it in the name of Allah, that a lot of people are waking up, brother. A lot of people are seeing things the way we see things. A lot of people are understanding and appreciate the need to be violent, to attack. This is a holy war. He doesn't ever call himself a Mujihadeen, that's clear, but he clearly evidences the same intent, the same desire. He's just not in a conversation with somebody that he trusts, like Shnewer trusted Omar or like the Dukas trusted Bakalli. And if the Court -- I'm sorry, did I answer your Honor's question?

THE COURT: You did.

MR. FITZPATRICK: And if your Honor accepts the proposition that this defendant stepped into this conspiracy with both feet fully appreciating the object, fully appreciating the consequences and he did so shoulder to shoulder with his four codefendants, then what I would offer your Honor, for the same reasons under 3553(a), the harshest penalty permitted by law. It's unfortunate. It's difficult. But in this case it's appropriate, necessary and reasonable.

THE COURT: Thank you.

MR. SPARACO: Just a brief comment to a minor thing that Mr. Fitzpatrick just states about the Constance of Jihad. The statements and the discussion that went on with my client, prepare soldiers, people are waking up, all occurred before the lecture started. So it wasn't in response, when the Court was asking Mr. Fitzpatrick about what motivated my client, I just wanted to make that clear that these discussions were not in response to this call to arms called the Constance of Jihad.

Judge, I'm going to move on to my 3553(a) factor.

THE COURT: Before we get there, I assume you object to the restitution obligation for the reasons expressed earlier?

MR. SPARACO: I do, your Honor, for the same reasons as my co-counsel.

THE COURT: I guess I should put on the record just so it's clear, I think by inference it's clear, but let's make it direct that I do find that the six level enhancement is appropriate for the reasons expressed previously. The 12 level enhancement's appropriate. I think the only evidence that we need to look at is the conversation about, the first conversation about the Fort Dix map when Omar says that he wants to get back at the U.S. and that's when your client offers the map. It's clear it's in retaliation for something that this government has done, so that's the only motivation, evidence is necessary to support the 12 level terrorism enhancement.

MR. SPARACO: Thank you, Judge.

As I indicated before, I'll incorporate all the

arguments I made for minor role, so I'm not going to repeat those again.

In my sentencing memo, I went into detail, many details to paint a complete a picture of Serdar as I could. I know the Court indicated that it received his letter.

THE COURT: Yes.

MR. SPARACO: Which was over 30 pages, I believe.

THE COURT: I didn't count it. It was a long letter and I read it many times.

MR. SPARACO: And we certainly appreciate that, Judge. I know I read it a few times. I'm not going to repeat all the things that he says, since you've read it so many times, you know it very well.

THE COURT: And obviously I got all the, read all the letters from the family members and friends that you attached to your brief.

MR. SPARACO: Thank you, Judge. And because you've read all of those and know all the information that's in there, I just want to highlight a few things.

Obviously he has no criminal history points. He has no juvenile offense. No adult offense. No arrest. This is Serdar's first contact with any criminal justice system.

The Court's aware of his employment history. And his education, his vocational training at Job Core in Edison, New Jersey. He was trying to make a go of a business, a

restaurant in Philadelphia, while still working at a 7-Eleven, holding two jobs, working, who knows how many hours a day to support his family. Applications for jobs in law enforcement, Philadelphia police, Cherry Hill police, Suffolk County and out in Oakland.

THE COURT: And Temple University in Philadelphia.

MR. SPARACO: Thank you, Judge.

Although the government has nefarious connotations on that, he really wanted to get some work, earn a good paycheck so that he could provide for his family.

His wife was about six months pregnant when he was arrested, so he's clearly trying to start a family of his own. He's the father, stepfather to an 11 year old, I'm sorry, maybe 12 by now, Judge, you're going to hear from him in a few minutes. He had a child who was born while he was in jail, August of 2007. He was trying to obtain a mortgage to buy a house. Not the typical picture of a terrorist. Someone who is very Americanized, wants to follow the American dream of owning your own home. Got his in-laws to cosign on a mortgage all right before his arrest.

I wrote in my memo Serdar is not a killer, doesn't really talk about killing. The codefendants talk about him wanting to kill from the inside, but you never hear that from Serdar. I don't believe that Serdar is the radicalized person that is envisioned by the enhancements, although I accept the

jury's finding and I accept the Court's finding of the enhancement application, but I sincerely believe that Serdar is not a person who will re-offend.

I believe that a sentence of something other than life will give this young man an opportunity to be a productive member of society. I don't believe that the need for the sentence to afford adequate deterrence -- I believe that a sentence of life imprisonment is too much to afford adequate deterrence. He's 25 years old. A sentence of life in prison, and I did some actuarial computations to figure out what his life expectancy would be, I think it's about 75, so we're talking about another 50 years before he dies, 50 years that he will be in prison.

And Mr. Cipparone did a good job of trying to express how his client would be in 35 years. I'll do the reverse and I'll look back to see how long 50 years is. 1959 Dwight D. Eisenhower was president. 1959 we only had 48 states. 1959 was the year that Buddy Holly and Richie Valens and the Big Bopper dies in the big crash. If you think about it, only a few of us can relate to that, but it's a long, long time. I submit to the Court it's too long.

Something less than life -- and I know what the sentences have been with the other codefendants. I know Eljvir Duka faced a similar charge without the other charge of the gun charge. I would submit, Judge, that his situation in this case is very different from that of his codefendants in that something other than life will give this young man a chance to get out and have some relationship with his stepson, with his son, with his wife.

That's my presentation, Judge. I have a few witnesses I want to call.

THE COURT: Please.

MR. SPARACO: First I'm going to call on my client's father, Muslim Tatar. And we have an interpreter.

THE COURT: We need to swear in the interpreter. Barbara.

DEPUTY CLERK: Yes.

THE COURT: Come up here, ma'am. We'll give you an oath, Ms. Arthur will give you an oath as an interpreter.

(AYSE AYYILDIZ, Interpreter, sworn.)

THE COURT: Thank you, ma'am.

MR. SPARACO: Judge, all the witnesses are going to speak without questioning.

THE COURT: Fine. But if you feel it necessary to interject a question, please do so.

MR. SPARACO: Thank you, Judge. I will.

THE COURT: It may help move things along.

Sir, what would you like to say?

Why don't you tell us your name first.

MR. M. TARTAR: My name is Muslim Tatar, I am Serdar

Tatar father.

My English -- I like to talk English but it's not enough, I'll just use the interpreter.

THE COURT: That's fine, sir.

MR. M. TARTAR: The most important thing that I want to say, I'm very sorry that I have to be here. I apologize to all America and to this Court that my son's name is involved in this matter.

I love my son very much even if he's guilty or not guilty. I respect all the laws and all the decisions. My son is extremely quiet and he would never give anyone a hard time.

When I started working, open my restaurant, I've been working for a long time, he had to stop going to school because of this in order to help me. For one-and-a-half years my son and I never had an off day. He always wanted to help me. He wanted to take care of his family. But my son would never even think about killing another human being. Not just my son, anyone in my family would not do that. There is not one person in jail from our generation in over 100 years. I'm very sorry.

THE INTERPRETER: I'm sorry, he said I'm very sad.

MR. M. TARTAR: It's the first in my life I'm appearing in court, this is very hard for me, and I only have one son. I do respect the Judge's decision and I still think that there is justice in America. We worked together in the

restaurant for the longest time and he delivered to the military. There would be 100 people at least in my restaurant every day, all military, and we service them, my son serviced them. We never thought anything else, it's impossible. And he always got along with everyone, there was never a problem. I had military families working with me, she was pregnant. And when my son was waiting tables, he would give her the tips because he would feel bad for her.

I just can't say anything else. I love this country. I'm sorry. I love this country very much and I want to live here for a long time. In my country military is a holy duty. And my son in the past wanted to be a police or a soldier. He would never -- he never thought or he would never think of hurting anyone. Even when he thought about getting married, we found out that the person he was marrying had a little child. And when I asked him was he sure, he said he was sure. He said that you grew up without a father and I don't want this child to grow up without a father. I'm just asking the Judge, I you grew up without a father, I don't want my grandchildren to be without a father and leaving the decision to me. All my respect.

THE COURT: Thank you, sir.

MR. SPARACO: Lale Sozen, this is my client's mother, your Honor.

THE COURT: The Russian interpreter is for the wife

and in-laws?

MR. SPARACO: Actually just for his wife. The in-laws will not be speaking today.

THE COURT: Okay. Good morning, ma'am. Will you tell us your name, please?

MRS. SOZEN: I'm Serdar mother, Lale.

THE COURT: What would you like to say this morning?

MRS. SOZEN: Serdar would spend all of his time with us either at the restaurant or at the house with his wife, with us. He didn't have many friends. He spent most of his time with his family. If he went anywhere, he would ask me first and then he would go. And he would always return all the time he said that he would be back.

We worked all together in our restaurant for the longest time. Our customers were mostly military and he love the military personnel ever since he was a little boy. And he always said that he liked being in the military and he would always like to wear the military personnel's hat. When he spoke with them at the restaurant, he would always mention it to them.

Serdar is an honest person. He would never make anyone sad. I remember once he found two wallets twice and it was full of money, cash, he returned it to the owners and didn't take any money from it. They offered the money to thank him; he wouldn't accept it.

It's been two years since I've been apart from my son but it felt like 20 years long and I cannot stand it. Serdar doesn't deserve to be in jail, your Honor. And what he's been accused with does not suit us, Serdar family or himself. Serdar loves America. When we first opened our restaurant, the first thing he did was to put an American flag up and he said I'm an American now and I live here and I work here. I remember once he closed the restaurant and came home, we live in a deserted street, he hit a deer when he was crossing there and he notified the police and the police had to calm him down. And when he came home, he was whiter than white. He was very sad and he was in bed for a week. He would never hurt even an ant, your Honor.

Please give him to us. Please give him to his son. Please don't keep him separated from his son. Don't send him far away. I love you, Serdar. I can't stand it. I never upset by Serdar. We were never ashamed of him. Whoever framed you should be embarrassed. I love my son.

THE COURT: Thank you, ma'am.

MRS. SOZEN: My son wanted to be a soldier just like them.

MR. SPARACO: Your Honor, the interpreter can be excused, this interpreter.

THE COURT: Okay. Do you need her to remain so you can speak to the family afterwards?

MR. SPARACO: No, I have someone else that can help out. His wife Khalida Mirzayeva.

(VALENTINA BREN-BUZIL, Interpreter, sworn.)

THE COURT: Thank you, ma'am.

All right. Would you tell us your name, please?

MS. MIRZAYEVA: My name is Khalida Mirzayeva.

THE COURT: How are you related to Mr. Tatar?

MS. MIRZAYEVA: I'm Serdar's wife.

THE COURT: What would you like to say?

MS. MIRZAYEVA: I would like to say that I arrived to America being already a widow. My first husband passed away in 1996. After my first husband passed away, I was alone who was taking care of my son and it was pretty difficult for me to live alone.

When I came here as a refugee, I landed in Philadelphia and I met Serdar in 2005. I liked him. He was attentive. He was polite. Hard working. He treated my parents with respect and really loved my child. My boy liked him as his own. And he was the one who asked me to marry him. Tradition of our people do not allow a young man to marry a widow. Moreover, I am five years older than him and I have a child. But he did not consider it to be an obstacle and in April 2005 we became husband and wife according to religious rights and traditions.

We both were working. We wanted to live independently. We rented an apartment and there was no woman who was happier

than I was. Serdar is a great husband. He is loving. He's caring. He is a real husband at home. We were dreaming about honest good life. We have big plans. He worked a lot and at the same time he wanted to study at Temple University. My husband never made an effort to walk away somewhere or spend time outside his home, he always spent time with us. He really wanted to have a child and I got pregnant. With hope and joy we were facing our future.

It all ended abruptly. My husband's arrest became a real tragedy for us. One time we came home we saw that the door was broken down, everything was scattered around the apartment and we found out that it was a search. It was my fourth month of pregnancy. He was arrested right in front of me. When I saw all that, I felt so bad and I almost fell down. After that, I got complications of pregnancy and this horrible stress violated the normal way of pregnancy. Three times I was hospitalized with a threat of miscarriage. That's not considering my moral state. And in spite of all the efforts undertaken by the doctors, my child was born premature. At this time he's 19 months old. My husband saw him only once. And my little baby boy doesn't know where the father is. My older son started studying at school worse than he used to. And the further it goes, the harder it gets for me to raise him alone.

What a great helper and what a wonderful father was

Serdar for my older son. And how happy my boy was that he got a father. He had a friend who would play with him, who would teach him how to draw, he followed his progress at school, he responded his questions and he maintained contact with teachers.

Serdar's arrest changed everything. I want you to understand if my husband really were a criminal, I would not be standing here and defending him. He's a positive person. He's a very sensitive person. He is a hard worker. He always was compassionate toward the people who found themselves in trouble. And I remember when we watched the TV that showed Virginia events when a student killed other students of that school, Serdar was crying because he felt sorry for those kids and their parents. Serdar had never hurt anybody. And I do not believe that he could commit a crime. That's not because I'm his wife but because I know him as a human being. That cannot be.

I believe that everything that is going on is happening in some horrible dream. I cannot believe that I am now alone with two children. Two kids are growing without their father and I would love to raise them good and honest people. That's much harder without having a husband. I cannot convey this to you in plain words. Yes, everybody can make a mistake. Perhaps Serdar made several mistakes. Please forgive him. I'm begging you. I am asking you please be fair towards our family. And I hope that you won't let my children grow without their father. It's a big tragedy for my children. I know that you're going to punish him. Please don't give him too long of a term or don't give him life term and please don't send him away too far. I cannot tolerate all that. I won't be able to live without him. Thank you very much. I have nothing else to say but I am asking you, I'm begging you, please pity us.

THE COURT: Thank you very much.

MS. MIRZAYEVA: Thank you.

MR. SPARACO: The interpreter can be excused, your Honor, I know she has to go to Newark.

THE COURT: Ma'am, thanks. Thanks for helping us out today.

THE INTERPRETER: Thank you.

MR. SPARACO: Serpil Yilmaz, my client's sister. And I have one more after that.

THE COURT: Fine. Whatever you want, Mr. Sparaco. That's why we're here.

Good afternoon. Would you tell us your name, please?

SERPIL YILMAZ: Sure. My name is Serpil Tatar. I'm Mr. Tatar's sister.

THE COURT: All right.

SERPIL YILMAZ: And before I start I wanted to give

you something, just a couple of things. If you don't mind.

THE COURT: Barbara, would you go see what she has please?

(Deputy clerk retrieving items for the Court.)

THE COURT: Ma'am, you wrote me an eight page letter, correct? Or you wrote an eight page letter -- well, it's actually nine. Did you give it to me?

SERPIL YILMAZ: I'm sorry?

THE COURT: And I have this letter and I read this letter.

SERPIL YILMAZ: I'm glad you did, I hope you got my points. I did have more to say --

THE COURT: Oh sure.

SERPIL YILMAZ: -- than the letter, but with this going on and on it's not stopping so I just made, you know, main points about my brother.

THE COURT: Please continue. And tell me what you can about your brother.

SERPIL YILMAZ: We didn't have to come to this country to live, we choose to live, come here and we continue to -- we continue to live this country, including him.

He did able to go back, he did have a chance, he did have a chance, but he did not choose to go back. It's not because he hates his country, it's because he likes more than his country here better.

And as you see on that picture when he was a little kid, he's interest for uniformed people as you see. He doesn't know anything about Fort Dix when he was a five year old kid.

Even that time I was a witness, everybody a witness in my family, he's not trying to kill someone when he was five. He was interested in the uniformed people. Because in our family there is couple of people in the very high position in the military, so we know them very close.

So he was interested, it start from there, it's not -- it didn't start after he moved here or it didn't start after he saw Fort Dix or he met with Shnewer or anybody. It didn't start anything -- it didn't start that time, it started the way before.

I wish I can hold his hand right now, and say everything will be okay, but it will never change whatever he says in this case, I know that. And I know -- I know there is couple of things he said, there's a lot of bugs in this case about only him, you know that.

He doesn't even say any jihad words, he doesn't say any as you say thank you for you to remind them, he never say any -- he didn't say anything like I wanted to kill or kill, he didn't use any word like this. And everybody knows who followed this case.

I'm not ignoring whatever he said or whatever he

did, he did make a mistake to say -- to lie to FBI. He knows that, we all know that, but there is again but. It's not to easy to make a decision at that point as you can understand.

He choose -- he trusted someone in uniform and he went to the police. There is a way to understand this Omar guy, he was an FBI or not. He can follow him, he can do something else but he choose to go to the police, not because he wanted to find, that's what I believe.

He trusted someone with the uniform in this country and he -- he tell every detail about himself. That's why I don't believe, that's why he went to the police because he wanted to find out.

I don't want talk too much about this case because there is everybody was talking already, but like Government's lawyer said Shnewer was a liar, so why we believe him whatever he said about my brother. Why we should believe him then.

He never say anything from his mouth he is a jihadist, and -- or he wanted to join military because he wants to kill them. You never heard from him, and like everybody -- everybody heard from the Government's lawyer, Shnewer is a liar. And why we trust him about my brother then.

So please, when you punish him, just don't accept those things whoever say something about my brother, just what -- I mean I know you're going to punish him, punish him whatever he said then, because there is no chance to go back and clear everything our memory whatever he said.

I know he doesn't mean anything to -- like he's going to say probably, and the first day I just want to say, the day before he got arrested we live together on weekend, weekend, it was a Sunday. And I was talking about the getting a cover for my bird for my house. I was mentioning that to him.

And he was like shocked because he was like he never heard anything like -- he never -- I never said anything like that before because I wanted to have a bird in a cave in my house. And he was telling me how you going to watch the bird in the cave. And I am so sorry you are in that cave right now; I wish you're not in there, I'm sorry.

I'm sorry, but this is true. This is true, I'm not making up this story or the letter, I didn't make any up. Everything was true.

Including the 9/11 story, because I was a witness on 9/11. I was living in New York, I was take care of the kid and right there very close. And I see everything, I went through with everything, I can feel that pain right now.

Because -- because it was hard to watch people suffering, and he knows that too. We all -- our family is not a radical Islamist, as you see, as probably everybody see because the background check for everything.

When we -- when I went through with the 9/11 they -- that tragedy, this guy he was accusing as a terrorist, he was crying, not only for me because he -- not only because he was afraid for me to die or anything, he was crying for everybody.

I was a witness, I witnessed that and I'm telling you the truth. This guy cannot kill anyone, believe me. Even that he doesn't say that, he wants to kill. I got a lot of things -- I'm sorry.

As you see on that picture, he has pictures with military personnel, as you see. He's hating him? No. He doesn't hate him, he gets a picture with him. How come this person get a picture with someone he wants to kill. That's not possible. That's not possible. There is no such a thing like that.

And he has a happy face on his face. Everybody can see it if they want it. There is no hateness, nothing.

When Omar guy was talking about Jews or I don't know who opened that conversation, I don't remember now, he was only talking about their business thing, not their religion or not Jewish -- not he hates or any other hateness, he doesn't say anything like that. He just say it about their business because that's the only thing he was thinking.

He doesn't hate no one. He doesn't show any -- this 16 months they were listening, he doesn't show any hateness to anyone. I know he said things, these things, but it's not him

what he said.

He said about his country, we don't -- we don't do anything with the gun, we do politic, that's what he said, that's him. The other things, what he said, that's not him.

But whatever I tell you, that's him, that's a totally different person. Because it's not because I don't know him, it's because that situation at that point make him to say that.

I know that's not right, it's not possible to do something for Allah, Allah give you a mind to use and he knows that. You don't do anything. You don't kill anyone for Allah, and he knows that.

My other sister wish to be here, but she's out of the country unfortunately. But I mean she couldn't come, but she's going to say the same thing probably, I just have to tell this because that's what she want me to do.

I wish everything, it was different. I wish this is just a bad movie we are watching right now. I wish that -- we cannot go back right now, I know that.

When we got this restaurant he was excited. We didn't want to come -- me and my husband used to live in New York. And when they open this restaurant we didn't come move to New Jersey, but he make us to move to New Jersey, go that place, to the restaurant, work there as a family.

If someone wants to kill someone and right there,

how come he includes all the family in that area. We even bought the house there, we're right next to the base. Can you imagine if something happened to the base? As I mentioned it to you in my letter. Something going to happen to us also. We are right there, that's not possible we get away. He knows that.

I don't know you made your decision yet or not, but please make your decision not the other ones said, whatever you make decision, whatever he did -- he did mistakes I know, the map thing, oh my God; he's been working that restaurant for a long time, he could do -- he could get any information if he wanted, but how come this Omar guy show up and then he give it to him.

He can do anything he wanted while he was there, but because he didn't want to do it, that's true, he didn't want to do it. He could get those maps before, he could get more information before.

We went to inside of the base when the air show was on. There is like millions of people there, we were watching just, you know, like enjoying that day. It was just hot outside that day and we got hot, that's only complaint he has. We went inside together, we watch the airplane show. So he had a chance to do something bad to them, but because he didn't want to do it, that's not him.

After Omar guy shows what the map came from, I don't understand. I know there's -- there's a question mark; when you look at the picture it's weird, I know that. But when you look at the other side it's also weird too, because that's not him.

I know you. I know you cannot kill anyone.

When you give the life sentence, that's it, we all in jail for our whole lives. It's not going to be life for anyone in our family. I wish I can change this. Like I said, I know -- I know he made a mistake, but there's so many things he didn't do in this case.

He doesn't have any video, anything. He doesn't even have a computer for those all 16 months. He not even before, because I can give his computer from my father's house, there is no such thing like a video watching, or gun is involved about guns. He's watching a video someone is killing each other, never. And there's no video at all, as Government's lawyer can prove that.

He doesn't say anything like he wanted to kill someone. So when you give your sentence, please, I'm not saying forgive him because he did some mistakes, but this is too much what he did, and the punishment is too much. He deserve to be out, believe me.

THE COURT: Anything else?

SERPIL YILMAZ: One other thing I want to say.

THE COURT: Please.

SERPIL YILMAZ: In the restaurant we all work so hard. I mean we all said that, but he is the one who wash -- he wash the dishes, whichever the military personnel eat; clean the bathrooms, clean the floor, we all did that and he is the one who did mostly.

Who can does this if someone hates someone, do you think he -- they can do this? I mean for me it's not. For me I'm not say -- I'm not proving here he's guilty or not, I'm just saying this to give you a question mark in your head.

No one can do this if someone hates them, or wants to kill them. He worked so hard for that restaurant and we grew up so fast, very fast. We got like 300 a day when we start, after that we got like starting 15,000. Or whatever. The money goes up because of him.

He was the -- he was the one who's dealing with the military person because they were our customer only. Can someone -- can someone do this when they hate -- when he hates them. I don't know. I mean that's -- that's the thing I cannot understand.

I don't know how he put himself in this situation. But this is true, he cannot do anything bad to them. Believe me, if you give him a chance, if you give him a few years and he leave -- I mean he probably he still want to be military personnel, believe me of that. It's not because I think he wanted to kill them.

No one can kill them, they can't -- no one can kill them if they -- they can't join the military alone, it's not possible to do that I think. It's who's doing that is not from the military, who's doing it from our side as we see on all other countries or other terrorist attacks. They're not military personnel. It's not good idea to join the military personnel to kill them.

And as you see, five years old kid, he is -- his son's kid that time, but he did wanted to have a picture with that uniformed people, he was crying for it. And we did send this person whoever is on the picture, we don't even know him, we send him this -- we got his mail in recently with the picture.

Please, understand this, he put himself in bad situation, but he is not a dangerous person, not for -- not for military person, not for other person, not for anybody. He is not a dangerous person.

As you see in this court he is the only one who's crying. He never shout to you or to anyone in this court. Not even us. As you see we have so much pain, but we never shout, we never say anything bad to people here, or -- or outside.

I don't know how my speech will change your decision; even you made the decision already. I really believe he cannot do anything bad to other people.

That's all I can. I wish I can say everything I wanted to say, but it's not going to finish.

THE COURT: Thank you for coming in. I know how difficult this must be for you. For the whole family.

SERPIL YILMAZ: The difficult thing is accused by -- like a terrorist, believe me. It's not like stealing thing, it's not like you're hitting someone you go to jail. In our family, our religion, terrorist we all fight for it in our country, and he knows that.

He knows what the terrorist attacks caused people's life, he knows that very very well. From his country, from here, 9/11, he was witness with me, and he got pain from it.

And thank you for the opportunity to say something because we would not say in court to you, and thank you for that.

THE COURT: Thank you.

SERPIL YILMAZ: And I wanted to say to you, I love you.

THE DEFENDANT: I love you too.

MR. SPARACO: Musa Mirzayev.

THE COURT: Good afternoon. What you tell us your name please?

MUSA MIRZAYEV: Musa Mirzayev.

THE COURT: What would you like to say?

MUSA MIRZAYEV: My father died when I was six months, I grew up without a father. When my mom married Serdar I was really happy. Serdar was really kind to me and to my mom.

I feel safer with him. I really love him. He helped me with my homework, he taught -- he teach me how to draw, he teach me how to play the football.

I cannot believe that he is a criminal. He wanted me to read more to help my mom. We had a good family, what is going to be now.

12 36PM Please return my father to me and to my brother. Thank you.

THE COURT: Thank you.

MR. SPARACO: That was my last witness, your Honor. My client wishes to speak.

12 36PM THE COURT: Mr. Tatar, you have an absolute right to speak, and you may speak at this time and say whatever you'd like.

THE DEFENDANT: I appreciate the opportunity, your Honor.

12 36PM This is the hardest day of my life. That's one of the reasons why I prepared this statement, and also because I know and realize the significance of today.

All those who love me, all those who care for me and still believe in me, and also for deliverance that will leave

12 37PM no room for criticism, for any skepticism or any suspicion as

to who I am. And what I believe in.

I hope and pray that this may be the one final chance I have to speak and go beyond just the formality.

Allow me first, your Honor, to say that I feel

12 37PM absolutely no hatred, no animosity towards anybody who's been involved in this case and has been affiliated with the entire investigation. I absolutely had no hatred for anybody.

I wish I can say the same thing about the feelings that people may have toward me. But unfortunately and under

12 38PM these circumstances, and contrary of what Mr. Richard Sparaco told me, I've been -- my personality and who I am has been misconstrued by -- by far my own actions, but by also through other people who are -- just had very limited associations with me.

12 38PM It was a very small peephole that everything has been shown to the entire world as to who I am. I know in the entire world -- sorry. I'm different, I'm not a terrorist. I'm not -- I'm not a killer. I believe in the philosophies -- I'm just going to read; I'm sorry.

12 39PM THE COURT: That's fine, take your time. There is no hurry here.

THE DEFENDANT: I don't believe in the philosophies that some people apparently have adopted. I am different, but I do understand the functions of the Government and positions

12 39PM and the different responsibilities that they have. As opposed

to the tasks of the defense and others.

Through what I have said so far I am in no way trying to disrespect or attack the decisions arrived by the jurors; and the U.S. Attorneys I mean no disrespect, but you

12 39PM got it all wrong.

I am truly sorry for all of this happening. I feel that I have to take responsibility for my actions in full, but, your Honor, Mr. Hammer, Mr. Fitzpatrick, I implore that the crime I've been found guilty of is not in any way was my

12 40PM goal, my intention, or the disposition, murdering innocent American soldiers was not what was going through my head when I took those actions and said those things.

Again, your Honor, and everyone who's listening, I truly apologize for what I have done, and I take full

12 40PM responsibility of my actions. But what I am not taking responsibility for is being accused of conspiring to murder innocent American soldiers. That I'm not responsible for.

Because as your Honor hopefully got a chance to review, and you did tell me that you read it and read it

12 41PM repeatedly, and I thank you for that, it was 23 pages; because in there I explain pretty much why I did what I did, and the things that I said and why I said it, even though it may not sound very believable, it's true.

What I really want to say today is about who I am

12 41PM and talk about my actions. Who I am, your Honor, I submit is

what I believe in. Who I am is my family. Who I am is what my dreams were. Who I am is what my vision is for this world and of humanity.

My moral standards set firm in doing the right

12 42PM things, and who I am is my virtue and I try so hard to sustain observing the middle course in everything.

Today is my third anniversary with my wife. Can I?

THE COURT: Sure.

THE DEFENDANT: Even though these bad circumstances,

12 42PM happy anniversary. I love you. (Addressed to defendant's wife.)

I offer my deep regrets, and sorrow for everything you all go through all of this pain. All of you, I love all of you.

12 42PM I got married to my loving wife three years ago today, and my life was -- prior to my marriage was like a roller coaster. I just set my feet on solid ground after I got married. I learned what responsibilities were, really mean, really meant when I got married. And I just started

12 43PM living the dream that I was planning for all my family.

The detailed statement I'm about to submit to this Honorable Court has been expressed to many persons prior to this and before my arrest as individualized opinions. These opinions are the philosophies I believe in, and when I express

12 43PM to them to the people who are dull and ignorant, it was looked

at as impossibilities because of the only constant observations of my external sight, and were simply because their own interests in dispositions.

I am sure that the expression damned if you do and damned if you don't, is a very familiar one to everyone here. I command, your Honor, no good lawyer means any bush in any and every applicable way.

Today I announce with the leave of your Honor, to everyone who is listening, especially yourself, Mr. Fitzpatrick and Mr. Hammer, to the respective President of the United States, Barack Obama and to the whole world, including the leaders of my country, I disclaim, denounce and disown any belief that teaches, uses or implicates violence in any situation or form to establish any good.

What I believe is violence is a last resort over incompetence, and I don't believe anyone here would argue contrary to my comments.

Further, I submit that I'm not a killer. And to my surprise everyone already said that, and I did this just yesterday, stayed up all night, only slept two hours.

I'm not an extremist, not even close to being a radical, nothing was provided really in my belief, to constitute any attributions to me as a terrorist.

I'm a patriot, I love my country. I love America. And so far there's only one American that I really love, and

that's my son, Jama (ph) he's not here today.

I consider myself to be an American despite the technicalities and I always will be. I truly value the direction that I believe and understand this country and it's citizens are aiming for. I'm with you 100 percent America. I'm not a terrorist.

No matter the shortcomings and mistakes of our leaders, and the ignorant, I'm with you, in keeping safe our freedom and liberties. I'm hit with the belief of fighting for the greater good of the people.

This country and any who loves in it are not my enemies, as the Government wants all to believe that I am. This Government doesn't know me; you guys don't know me, you guys don't know who I am (directed at U.S. Attorneys).

And I'm here to tell you that I am not a terrorist, again. I believe in diplomacy, and I am not a jihadist. I believe in the judicial system set to litigate and educate, and make change and make a difference. I am not part of the problem, I promise I will, I am, and I will continue to be part of the solution.

I made a huge mistake and I lied to the FIB agents, I admitted that the first day I met with my attorney. I lied twice because it was the same person who interviewed me in the first place, who then wanted the information I was trying to give him.

Excuse me.

The huge mistake I made was to lie to the FBI about giving the map. And I'm really sorry for doing, for all that I'm going through and all that everyone is going through, I'm very sorry. That this is all happening just because my stupid-ass lie about a freaking map.

But I do reflect that on the day Mr. Brennan and Mr. Rycek interviewed me, I told them both that I would do anything to stop what I thought was really going to be a terrorist attack. I reported the whole incident as to the best of my abilities and my memory.

My interview with two agents are not fully reflected on documents. The information I gave them were not put there. I gave the telephone number of Mohamad Shnewer to the FBI agents, as I wrote to you in the letter. I don't know why it's not there.

In my interview -- I'm sorry. I was afraid and that's why I lied. I was almost going to shit myself; excuse my language. I was scared of exactly what's going on today, exactly what I'm going through today. This is what I was afraid of.

Ever since 9/11 happened a lot of the Muslims that lives in this country has went through great duress, and under -- have been under great pressure, just -- just to observe basically part of their religion. And doing -- you know,

attending Friday prayers and so on.

People are afraid to be blamed for what other people committed. This is what's happening today. I tried to change that view, and that was one of my goals; I wanted to change that view of the people that there is a collateral fight against terrorism, and I wanted to be part of it.

I wanted to show not just the -- not to be a celebrity, not to be just somebody just to make a big show of it, but to show that, you know, Muslims care too and we're human beings that value life.

I don't mean in any way to disrespect the decisions that the jury arrived at, but I contend and beg with all the humility and deep anguish, those actions I took and the things that I said were not done in -- with any malice in my heart or mind.

I did what I did and the things that I said were done in complete utter ignorance of what was really going on. I had no idea what Shnewer was doing and saying to Mr. Omar. I had no idea about those gun purchases, about what they were saying about me. That I don't even remember saying it. Or being apart of it.

I don't know why people observed me the way they observed me, the way they thought I was, but I'm not that person who they thought. I wish I could just show it and prove it, but other than words I have nothing else to submit here.

I was trying to help stop what I -- what could have been in my mind the next 9/11 attacks. But that was not the only thought I had. I thought that I might be getting set up. Because of the two gun purchases that I make that Mr. Fitzpatrick mentioned, that I purchased in order for Dukas and Shnewer to use, I did not purchase them solely for the fact for them to use those guns.

I went to the shooting ranges in Fort Dix and shot with -- shot guns with those U.S. soldiers that you claim that I wanted to kill, together side by side, in those ranges.

I went to hunting ranges, hunting clubs, I wanted to buy a hunting license so I could go hunting with this worker that I had; I didn't want to mention his name because he didn't really want to be part of this. My attorney knows who it is.

I just enjoy guns. I mean I wanted to be a police officer and I wanted to be a military personnel, what more clear explanation can I give more than that. I love gadgets.

The problem with the gun purchase that I made was clear, that, you know, I think it's out there; I falsified my citizenship of the United States on the application.

And prior to doing that I went to another gun store and filled out the complete application and put my A number and all of the information, which is not a lie.

And the person told me that he didn't want to sell me the gun and I had to get permission from the attorney general, and he wouldn't sell it to me. And I didn't know I had to really buy it with the green card, so I figured I'd just put citizenship.

And it worked, they sold me a gun because I put citizen there. It just went through. I'm really sorry for that. But what I did afterwards and when I realized the mistake that I made, I -- I thought first to take those two guns to a police station and just return it to them and tell them what I did.

But I was told that I was going to be there -- I'd probably get arrested and get deported. I had just gotten married at that time and I didn't want none of that to happen.

And then I took it to a gun store and tried to sell it, and they told me it was going to be -- they'd give me $300 only, and I spend like 6, $700 for those two guns; I didn't want to just give it away.

And then I thought and I found the responsible person who already had a gun license and a gun, and had a citizenship, who had -- you know, be able -- had they been able to hold onto those guns, so I transferred it to him legally, and you know hoped for the best basically after that.

But I didn't even know that the person was related in any way, shape or form with, you know, Mr. Shnewer's

family. I had no idea.

Getting back as to what I had done and said to the cooperating witness. I truly believe I was doing the right thing by acting what I thought a potential terrorist suspect would have expected me to act like and say the things that he would expect me to say. I said those things and did the things that I did because that's what I thought a terrorist would want to hear. And also because I wanted to get more information. And I kept asking him what are you trying to do. What are you guys trying to tell me, at least tell me. I repeatedly tried to ask so I could get more information and then he finally told me get me the map and I'll tell you in two weeks. Even at that moment I didn't want to do it. And I said to him no, just use my head. I know everything. Tell me. Tell me so I could tell you. But it didn't work. And that night I, I was going through -- I had a tornado going through my mind. I had a million thoughts. I had to do something that the FBI didn't show up, it was three weeks then. I've been going back and forth and every day I spoke to, almost ever he day I spoke to Mr. Dandridge. He asked me, you know and I showed him the record that I made. I recorded Mr. Omar on his conversation when he was asking my about the maps. And I gave that recording to Mr. Reishack and Mr. Brennan, they both listened to it. Mr. Brennan then told me not to lose the recording. And I'll explain that --the

recording doesn't exist right now because one day on my way back from work, I'm sorry -- but my wife is a pretty jealous female and I love her for whatever she is. That doesn't matter to me. I worked at the Temple University where there are a lot of females and pretty ones, as a matter of fact. And I'm a pretty social guy and I speak with everyone, you know, and I'm pretty friendly. But on my way back from work she thought I was cheating on her at the time. There was a car accident on 295 that was flipped over and I already knew what I was going go through when I got home about, you know, who have you been with and lots of stuff like that. So I wanted to record the traffic and the accident so I could show it to my wife that look this is what happened and this is why I'm late. And I looked at the recording that I had on my telephone and it's been like two months or three months, nothing happened. I waited. I waited for the FBI to come back and talk to me again. I could have contacted them myself. I don't know why I didn't do it. I was really afraid. I didn't want anything to do with it after that interview. I said you know what, you know nothing is going on. I don't know. I just erased it. And I recorded the conservation -- I mean recorded the video of the car accident so I could show it to my wife. I wish I had that recording so I could have shown to it the jury on that day. That I actually had the recording. I tried to do it four times actually. You know every time I asked him like what are you guys trying to do. I would hit the recording button and he just throw off the conversation and I just hit if off. I was trying to do my best. I was really trying to do my best, trying to get as much information as possible. I did fear that I could have been part of something or somebody after me but because of that gun, that's the only reason why I thought they were after me because of those guns that I purchased on lying about the citizenship. When Omar told me I want to make them pay what they do to me. I was shocked when Mr. Fitzpatrick read the transcript. It didn't sound like exactly what really sound like. I, I was in shock not because as Mr. Hammer had once, but because I was -- I wasn't sure why he knew or about that he knew of something.

I'll just continue. I have been completely consistent and honest with my attorney here ever since the beginning. Because I learned what lies can do to someone. I had no excuse for lying even though I felt I was being set up. And at the time the interview I was under great duress. On the day of my arraignment, advised by one of the FBI agents I don't know who, that truth would set me free. And I adopted that advice and I know where that's from and I never lied from that day on. I'm -- I admit to my huge mistake that, that I made and I wish only that I could show how sorry I am for doing it. Your Honor, I strongly believe and learned in

honesty and integrity thoughts and deeds is a great virtue. I am an independent thinker with interest in logic. I am far from being the type of person who can be easily manipulated or be simply inspired by some videos or lecture or some lethoritcal (sic) propaganda. I can't understand why because they don't know me. My brain capacity is not the size of an ameba. I'm not an idiot. I'm sorry. Maybe I'm calling someone else one, but I certainly am not. I believe that unless a person has a severe mental problem or in a state of duress or out of ignorance one cannot deliberately or maliciously perform an action that they know to be wrong. The person who understands an action to be wrong, therefore, in his intellectual morality cannot and will not deliberately and maliciously be in agreement with any such propositions. I like to use the analogy to compare to my situation, Your Honor. I know that there was some sort of an act going on that was wrong, and I knew it was wrong. So, when I did commit those actions, I submit that I didn't commit them with malice or with vulgarity. I know that, I know that there was some -- I'm sorry. My thought, I was -- in my thought I was being from what I now think being Pinkerton, doing my own investigations and giving the map, from giving the map was I contend not malice or in my mind wrong because I believed that's what the law enforcement would have done if I was actually the informant of the Government. I understand and

believe in the concept of the theory that good men is the canon and measure of excellent. It is the task of the Government to ensure that the actions that citizens accommodate their lives to their canon as closely as their inner capacities and external pressures that the law can deter. I was trying to accommodate to that canon and I plead to Your Honor my actions were not done in malice, but were taken under great pressures in the state of duress and only with good intentions. I tried to act as rationally as possible as far as I could possibly have acted. To all reason and notion disappeared completely overtaken all my fears that day when I got interviewed. The information that I provided, again I said this before, was not taken and it was the same information that they asked me for. They were asking me for information and they were disinterested in. I was indeed just -- they were glancing contradicting looks at each other when they were doing what they did. What would anyone have done and thought if they were in my position. I ask Your Honor if you would contemplate and put yourself in my shoes and everyone. What would you have done if you were exposed to so something, what you would have thought would have been the next 9/11 attacks and especially if you were exposed and the person that was interested in law enforcement. What would you have done. I tried to discourage and I was trying to investigate to stop this fear of any external pressure by my

own self not getting paid a dime, I volunteered myself to take up the task. I thought that I could be killed. I thought that I was risking my family's life. I thought about being set up. I just ask put yourselves in my shoes. I could not let another 911 attack take place and let those suffer who has no responsibilities for. I could not live with myself if I did not do anything to stop what I was exposed to. How could anyone have. How could I not do anything and watch millions of people suffer, not responsible -- suffer the consequences again and watch them suffer for actions that they did not do. I have always hated the fact that how the terrorists just do things and watch everyone suffer the consequences of their actions. That's why I hate every one of those people who the Government alleges that I was inspired by. I hate them. And me being one of them is impossible. I am against it 1000 percent. I am one of those who has suffered those consequences and actions taken by others. I wish I could turn this all back and have a chance to pay it all back those millions of dollars that was spent while children are starving to death. People are suffering not being able to put any gas in their tanks or put food on their table. I wish I could pay that money back. I was in the thought that I was doing the right thing and I ended up screwing it up for everybody. My family didn't deserve nothing that I had been going through. My family didn't deserve -- I'm sorry. My family didn't deserve nothing that they had been going through. The world to them with my father losing his business and his house, worked so hard to build. I'm sorry I'm messing up.

THE COURT: Take your time.

THE DEFENDANT: Nothing makes extension to me, Your Honor. All of you respect the fellow Americans. Soldiers in the back. Everyone. I was exposed to what I thought again was to be another 9/11 attack. I thought the guy who the informant is, the guy who I recorded on me cell phone was Al-Qaeda or something because I asked him whether or not if he was connected overseas, and he said yeah. And that was the conversation that I recorded also. That was the reason why I started saying, oh, so you can take me overseas. You have connections. That was the reason, not because I wanted to leave the country. Put yourself in my shoes, Your Honor, please. If one was exposed to such a huge possibility of a terrorist attack especially the person exposed is again interested in law enforcement, what would he have done. I thought that I had the big game. I thought I hit the 12 pointer buck. I thought I might be getting set up again, but I could not let the thought count me out of it. I cannot let the thought of being set up, count me out of it. What if it wasn't a set up and what if it was real. I couldn't live with myself.

Your Honor, I wrote whole bunch of more. I could

probably go on forever, but I'll just go to my last page and finish there.

Your Honor, this is especially for you. I have always tried to be with utmost respect to you and the station you have been trusted. I have called you Your Honor not because that's what a judge should be called. Excuse me. Not because that's what everybody else calls you, but because you must really be an honorable person a man to possess the rank of being a judge. You must really be an honorable man that never sways to any access or deficiency but who one who always tries to have choose the median and stay clear of either extremes that come with every virtue. Choosing courage over crowdedness and rational. These choosing temperedness over -- I don't know how to pronounce the word. I got this from a book called "Aristotle Ethics" lisenless -- don't know how to pronounce and sensibility. Choosing magnificence vulgarity and pettiness and on and on. I respect Your Honor's decision no matter what may be because I know I did something wrong. Even though that wrong is not what I got found guilty for. I throw myself at the mercy of your court. I throw myself at your mercy, Your Honor. And I finish with: The man is best who sees the truth himself. Good too is he who is listens to wise counsel, but who is neither wise himself nor willing to ponder wisdom is not worth a straw. Thank you.

THE COURT: Anything else, Mr. Sparaco?

MR. SPARACO: Nothing further, Your Honor.

THE COURT: Take a five minute break, ladies and gentlemen I'll be back in five minutes with any decision in this matter. Thank you.

(Recess)

(Open court)

THE DEPUTY COURT CLERK: All rise.

THE COURT: Please have a seat everyone. Okay. I made the rulings on the Guidelines and the applications by defense counsel for variances. So now as the law requires we'll turn to the 3553 factors.

The first is the nature and circumstance of the offense, and history and characteristics of the offender. I do adopt the findings of the Probation Department and the pre-sentence investigation report. I do find they're adequately supported by the evidence in this case.

Let's talk about Mr. Tatar. I do appreciate his family speaking. I hope his mother is feeling better. He has no prior arrests, was born in Turkey. It's not necessary to get into detail but it was difficult situation as a child. Difficult family situation at times. But ultimately he ended up in the United States, and he went to Cherry High School where he had a difficult time again because of the language barrier, and he dropped out of school but ultimately got his GED. Got married, has a child and is caring for his

step-child. Tried a number of times to become a police officer. He tried to join the military. There's some mental health issues. Good employment record. A very devoted family man. An interesting letter from his sister about their religious beliefs. And that sect of Muslim belief that he apparently ascribes to which is different and it's one that I was unaware of. He did receive a certificate for a security guard course. I read his letter many times. I heard what he said today about what he says he was doing. For list sister his parents eloquently tell me that he's not a killer.

When we turn to the nature of the offense, the picture is not so good. We all know by now he provided the map and it was his idea. He knew that it was going to cause problems. He knew he was in trouble when he did that. I'm getting involved in it. This is very big, you know. He brought up the idea of the power plant. I'm in honestly, I'm in. Yes, it's a good thing to do. Doesn't matter to me whether I get locked up. Whether I die, it don't matter. I'm doing it in the name of Allah. Listen to the recording. It says the Muslims are waking up. We must prepare as soldiers. Dritan says that he wanted to join the military to kill from the inside. He did dry to join the military. Shnewer says that Tatar is ready for Jihad. First among us. He's first among us. Shnewer chose Fort Dix because Tatar knows it like the palm of his hand. Bought some guns. Lied to the police.

lied to the FBI. On the other hand, as we've all acknowledged, he was not in the Poconos in the first trip. No evidence he ever owned or viewed the videos. No evidence he spoke to anyone about these particular machine guns. When his home was searched, some nine millimeter ammunition was found as was a rifle scope. Some ear protection and goggles. He was never charged with a weapons offense. There's no evidence he was involved in any surveillance. The government argues that the reason for the difference in quantum of evidence simply because he was not as close to Omar or Bakalli as the other defendants. And I'm realistic enough to know as I mentioned yesterday and that much went on here in this conspiracy that we never heard anything about because there was no opportunity to tape record it. And I don't say that because I think they're guilty for things that I imagine may have happened. It's just that when a lawyer argues that the importance of the absence of some evidence, I sort of take that with a grain of salt.

The need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment for this offense. It is, as I said, the most serious offense that I'm aware of in the Guidelines. Does Mr. Tatar respect the law? Well, he didn't. And he continued to disrespect the law when he lied to the agents. Deterrence. Very serious crime. Deterrence is absolutely

United States District Court

Camden, New Jersey

necessary. General and specific. Protect the public from further crimes of the defendant. I'm not so sure that that turns out the same way it did with the other defendants. The other defendants had a much greater sense that they were an immediate and eminent danger to public. Based on what Mr. Tatar said here, that we know about, I could conclude that's true here also.

I reviewed the kind of sentences available. I've talked endlessly about the Guidelines. Sentence disparity is not really a factor, and restitution will be ordered for the reasons that has been ordered from the other cases. The government argues for a life sentence. There are significant reasons why they are correct, and the life sentence is called for in this case. But that's not the end of the analysis. I thought long and hard about Mr. Tatar in this case. The Constitution and the laws of the United States give me the power to impose a sentence of life. Simply affixing my signature to a judgment of conviction condemns this man to spend the rest of his life in prison. I have the power to dictate what he does every day for the rest of his life. Enormous power. But with that comes tremendous responsibility. Responsibility to make sure I get it right. Because I don't have the ability, none of us has as judges have the ability to review our sentence in five years, 10 years, 20 years, 30 years. We have to get it right, now.

United States District Court

Camden, New Jersey

During and after this trial I always got the sense that Mr. Tatar was in a different category than the others. And we've talked about that today. The quantum of evidence is different and it may be as the government says. There just wasn't the connection there just wasn't the connection that the other defendants had. But it was always something more to me and I couldn't put my finger on it. And I read, and I reread, and I reread the Presentence Report and Mr. Sparaco's brief and the letters and I read the Government's brief again and again and I reviewed the evidence and I too stayed up most of the night thinking about this and thinking about what I'm going to say. And I finally put my finger on it. And what was said here today confirmed it. I asked the government the question, what motivated this man. And it's the Government position its religious fervor. And indeed he does say it, I'm doing it in the name of Allah. But that's all he ever really says. That's the only time he ever invokes the name of the Lord. The only time he ever invokes a religious reason for doing any of this. And I'm not impressed with it. I know a lot of people who invoke the name of their God. Very religious people, and I come away with this, simply not convinced by a preponderance of the evidence that he was driven to do this by any ideology of hatred or any religious fervor. I am absolutely convinced that he was going through with this, he was going to help this, he would do what he can do and to make

United States District Court

Camden, New Jersey

this happen. That they were going do kill American soldiers merely because of the status. But what drove him was not what drove the other four defendants in this case. And that makes a difference. It makes a big difference. Because he's the only one of these defendants who I have any hope of rehabilitating through a prison sentence. The others are so consumed with hatred and their ideology of theirs that they're never going to change. I'm not convinced the same is true of Mr. Tatar.

Accordingly, I am not going to give him a sentence of life imprisonment. He's going to be punished severely for his actions and his desires and what he did that led up to his arrest.

Therefore, pursuant to the Sentencing Reform Act of 1984 it's the judgment of this court, that the defendant, Serdar Tatar, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 396 months. The math is 33 years. Upon release from imprisonment, the defendant shall being placed on supervised release for a term of the rest of his life. Within 72 hours of release from the custody of the Bureau of Prisons, he shall report in person to the probation office in the district in which he is released. While on release he shall not commit any other Federal, State or Local crime. He's prohibited from possessing any firearms or other dangerous device. He shall not possess any illegal

United States District Court

Camden, New Jersey

controlled substance and shall comply with the other standard conditions that have been adopted by this court. I excuse him from the mandatory drug testing provision. There's no evidence whatsoever he has any drug or alcohol problem. However, if Probation during the course of his supervised release feels that he may have a problem, they do have the authority to subject him to drug testing. He shall cooperate with Immigration and Customs Enforcement to resolve any problems with his status in the United States. He shall provide truthful information and abide by the rules and regulations of Immigration and Customs Enforcement. If deported, he shall not re-enter the United States without the written permission of the Attorney General. If he does re-enter the United States, he must report in person to the nearest U. S. Probation Office within 48 hours. He shall cooperate in the collection of DNA as directed by Probation. For the reasons the other defendants I do find the restitution obligation of a hundred and twenty-five thousand dollars is appropriate. I will waive interest on that. Payments must be paid to the U. S. Treasury forwarded to the Clerk of the Court for distribution to the Department of the Army like the others. His restitution obligation is not affected by any restitution payments made by other defendants in the case, except that no further payments shall be required after the entire amount has been paid by all the defendants.

Restitution is due immediately. I recommend he participate the Inmate Financial Responsibility Program, and pay the sum of $25 every three months. If he has not or if the restitution obligation has not been paid at the time of his release, he shall begin monthly payments of no less than $500 starting 30 days after release. He must provide the U. S. Probation Office with full disclosure of his financial records including yearly income tax returns upon the request of U. S. Probation. He shall cooperate with the probation officer in the investigation of his financial dealings and provide truthful monthly statements of his income. He cannot open any new credit charges or additional lines of credit without approval of Probation unless he's in compliance with a payment schedule. And he cannot incumber or liquidate interest in any assets unless it's in direct service of the restitution obligation or otherwise has the express approval of the Court. He does not have the ability to pay a fine. I waive a fine in this matter. I am going to require that he submit to mental health evaluation and/or treatment as directed by U. S. Probation. And he must complete any program he's placed in and follow and abide by the rules of any program until satisfactorily discharged with approval of U. S. Probation.

He must pay a special assessment of a hundred dollars which is due immediately.

Mr. Tatar, you have a right to appeal this sentence and

your conviction, but you must take your appeal within ten days. That concludes these matters. Thank you. And I remand him to the custody of the United States Marshals.

MR. SPARACO: Thank you.

(The matter was then concluded)

C E R T I F I C A T E.

I, **Carl J. Nami, C.S.R.**, Official United States Court Reporter and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.

S/Carl J. Nami, CSR

CARL J. NAMI, C.S.R.
Certificate No. 557
Date: April 29, 2009